

THE REORGANIZATION OF THE MARYLAND GENERAL ASSEMBLY,
1966-1968: A STUDY OF THE POLITICS OF REFORM

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To Suzanne

This project has been as much hers as mine.

There is in State Legislatures a restlessness which, coupled with their limited range of knowledge and undue appreciation of material interests, makes them rather dangerous. Meeting for only a few weeks a year, or perhaps in two years, they are alarmingly active during those weeks, and run measures through whose results are not apprehended until months afterwards . . . the meeting of the legislature is looked forward to with anxiety by the "good citizens" in those communities, and its departure hailed as deliverance.

--James Bryce, The American Commonwealth, 1891

If state legislatures are ever to develop into something more than the vestigial tail on the body politic, it will be through the efforts of concerned citizens such as you . . . No other government body deals more directly and continuously with the quality of life in America than the state legislature.

--Hon. Jesse Unruh, Speaker of the California Assembly, in an address before the Citizens Commission on the General Assembly, 1967

ABSTRACT

I. Introduction

This dissertation, a study of the politics of state legislative reform, examines the reorganization of the Maryland General Assembly from 1966 to 1968. Contrasted with either a descriptive or a prescriptive approach, the study concentrates upon the interaction between reformers and holders of political power. This interaction--a mixture of cooperation and conflict--reveals the dynamics of both reform politics and the legislative process.

Legislative reorganization consists of constitutional and internal changes in the representative branch of state government, designed to make that branch more "responsible" and "responsive" in a pluralistic society. By the early 1960's in Maryland, distrust, malapportionment, and administrative-procedural inefficiency had combined to create an environment making some General Assembly reforms necessary (Part Two, Chapters II-V).

II. Programs of Legislative Reform

The principal programs to reorganize Maryland's Legislature from 1966 to 1968 included (1) a "citizens"

study designed to stimulate support for legislative reform through public hearings and manipulation of the news media. After public awareness had been developed, the strategy consisted of negotiation with legislative leaders to gain their support for the 46 recommendations proposed by the Citizens Commission on the General Assembly. (2) A General Assembly-sponsored study by the Eagleton Institute of Rutgers University. (3) the program employed by the Maryland Constitutional Convention in its revision of the State Constitution's Legislative Article.

The dissertation's analysis of the preceding reform programs focuses on the behavior of political elites, including legislative and other state government leaders, as well as individuals and organizations participating in "the politics of legislative reform."

III. Chronology and Contents

Part I introduces "the state legislature problem," through an analysis of responsiveness and responsibility as major criteria for effective representation. A state legislature's functions are examined through the relationship of its formal rules and the operation of these rules in practical political situations.

Part Two, explains the political climate in Maryland

from 1960 to 1966 by relating demographic figures to geographic shifts in population and changing public opinion. The attitudes of typical Maryland legislators are examined in the context of Maryland political history and as major economic-social changes move the State from a rural to an urban-suburban environment. Political survey data reveal a growing public dissatisfaction with the performance of the State government.

Part Three, introduces the politics of reform as related to the concept of "responsiveness to change" or a legislature's willingness to implement changes that may alter its internal political power structure. In the initial stages of the Eagleton and Citizens Commission programs, it becomes apparent that both reform groups attempted to balance change with stability in order to gain the support of legislators who, as political elites, would determine the success or failure of reorganization.

Part Four, "The Politics of Legislative Reform in Action," analyzes the implementation of legislative reform proposals in Maryland--both the successful and the unsuccessful efforts. Interaction between reformers, legislators, news media, and the public is integral to

an understanding of this implementation phase.

The study concludes that public participation in legislative reform is desirable, provided that a strategy of reform incorporate participation on a basis which maximizes public understanding of proposed changes in the legislative process. In order to be effective, that strategy should be "incremental," permitting public understanding and, if necessary, some adjustment of ultimate goals to effect that understanding. The Maryland experience indicates that there is a willingness of those who control a state legislature to reform it, provided there is receptivity by its members and the public.

TABLE OF CONTENTS

Chapter	Page
PART ONE. THE STATE LEGISLATURE	
I. Introduction: Modernization of State Legislatures by the Politics of Reform	1
II. The Characteristics and Functions of a State Legislature	9
PART TWO. A CHANGING MARYLAND	
III. Maryland: Her Politics, the Governor, the Legislative Process, and Cast of Characters	33
IV. Shifts in Population. The Public Begins to Support Political Reform	52
V. Reapportionment of the State Legislature and Growing Public Dissatisfaction with the Assembly's Performance	66
PART THREE. PROGRAMS FOR LEGISLATIVE MODERNIZATION IN MARYLAND	
VI. The Politics of Reform and Responsiveness to Change	96
VII. Pressures for Change: Legislative Reorganization in Maryland; Enter the Citizens Commission on the General Assembly	108
VIII. Enter the Eagleton Institute, Broadening the Base of the Citizens Commission and a Comparison of the Two Legislative Reform Studies	155
PART FOUR. THE POLITICS OF LEGISLATIVE REFORM IN ACTION	
IX. Legislative Reorganization in 1967: Action by the General Assembly	178

TABLE OF CONTENTS (Continued)

Chapter	Page
X. The Citizens Commission and the Maryland Constitutional Convention	211
XI. Continued Response by the Legislative Council and General Assembly to the Citizens Commission and Eagleton Reports, November 1967 to May 1968 . .	242
XII. The Failure of Maryland's Reform Politics in 1968: The Defeat of a New Constitution	263
XIII. The Success of Maryland's Reform Politics in 1968: The Legislative Council Reorganizes Itself and Its Committees	300
XIV. Summary and Conclusions	321

APPENDIX

Appendix

A. Citizens Commission and Eagleton Reports: Comparison of Recommendations	339
B. Legislative Salary and Pension Plan--Maryland General Assembly	
C. George S. Wills, Remarks Prepared for the Legislative Article Committee, Hon. Francis X. Gallagher, Chairman, Maryland Constitutional Convention . . .	
D. Jack Eisen, "Assembly Still Needs to Make Major Reforms," <u>The Washington Post</u> , January 9, 1968 . .	
E. Memorandum to Dr. Milton S. Eisenhower from the Chairman of the Citizens Commission on the General Assembly	
F. Judicial Proceedings Committee, Maryland State Senate, 1968: Committee Staff Personnel Responsibilities and Public Information Memorandum	

TABLE OF CONTENTS (Continued)

Appendix	Page
G. Statement to the Legislative Council by the Chairman of the Citizens Commission on Maryland Government, August 15, 1968: "Reorganized Committees for the Maryland General Assembly" . . .	
H. The Bill Drafted to Restructure the Legislative Council, August, 1968	
I. Research Staff Increases for the General Assembly, Calendar Year 1969 over Calendar Year 1968	
J. Newspaper Reports of Citizens Commission Work . . .	
Bibliography	

ABSTRACT

I. Introduction

This dissertation, a study of the politics of state legislative reform, examines the reorganization of the Maryland General Assembly from 1966 to 1968. Contrasted with either a descriptive or a prescriptive approach, the study concentrates upon the interaction between reformers and holders of political power. This interaction--a mixture of cooperation and conflict--reveals the dynamics of both reform politics and the legislative process.

Legislative reorganization consists of constitutional and internal changes in the representative branch of state government, designed to make that branch more "responsible" and "responsive" in a pluralistic society (Part One, Chapter II). Early state charters vested significant powers in the legislature, primarily as protection against the excesses of power that had once been exercised by British colonial governors. But these grants of power were eroded by 19th century restrictions upon, and a lack of public confidence in, the state assembly. By the early 1960's in Maryland, distrust, malapportionment, and administrative-procedural inefficiency had combined to create an environment making some General Assembly reforms necessary (Part Two, Chapters II-V).

II. Programs of Legislative Reform

The principal programs to reorganize Maryland's Legislature from 1966 to 1968 included (1) a "citizens" study designed to stimulate support for legislative reform through public hearings and manipulation of the news media. After public awareness had been developed, the strategy consisted of negotiation with legislative leaders to gain their support for the 46 recommendations proposed by the Citizens Commission on the General Assembly.¹

(2) A General Assembly-sponsored study by the Eagleton Institute of Rutgers University. Authorized by a \$20,000 appropriation, the Eagleton report was in part a legislative response to Citizens Commission activity. Both programs differ in presentation of recommendations, use of political environment, and implementation of proposed reforms. But the two studies complement one another and differ in strategy from (3) the program employed by the Maryland Constitutional Convention in its revision of the State Constitution's Legislative Article.

The dissertation's analysis of the preceding reform programs focuses on the behavior of political elites, including legislative

¹The author's relationship to Maryland legislative reorganization consisted of serving as chairman of the Citizens Commission on the General Assembly, organized initially as a political party study committee and subsequently expanded to 60 members from both parties and the civic-business community. With financial assistance from local business and the Ford and Carnegie foundations, the Commission's report was distributed to 5,000 government, civic, and business leaders in Maryland and 500 legislative leaders from other states.

and other state government leaders, as well as individuals and organizations participating in "the politics of legislative reform."

III. Chronology and Contents

Part I introduces "the state legislature problem," through an analysis of responsiveness and responsibility as major criteria for effective representation. Functions of legislative oversight, management of conflict, and compromise are examined through the relationship of a legislature's formal rules and the operation of these rules in practical political situations.

Part Two, "A Changing Maryland," explains the political climate in Maryland from 1960 to 1966 by relating demographic figures to geographic shifts in population and changing public opinion. The attitudes of typical Maryland legislators are examined in the context of Maryland political history and as major economic-social changes move the State from a rural to an urban-suburban environment. Political survey data reveal a growing public dissatisfaction with the performance of the State government.

Part Three, "Legislative Modernization in Maryland," introduces the politics of reform as related to the concept of "responsiveness to change" or a legislature's willingness to implement changes that may alter its internal political power structure. In the initial stages of the Eagleton and Citizens Commission programs, it becomes apparent that both reform groups

attempted to balance change with stability in order to gain the support of legislators who, as political elites, would determine the success or failure of reorganization.

Part Four, "The Politics of Legislative Reform in Action," analyzes the implementation of legislative reform proposals in Maryland--both the successful and the unsuccessful efforts. Interaction between reformers, legislators, news media, and the public is integral to an understanding of this implementation phase which included Citizens Commission activity in the Legislature and the Constitutional Convention; Legislative Council action on the Eagleton-Citizens Commission reports, and the 1968 defeat of the proposed Maryland charter.

The study recognizes an uncertain quantitative relationship between legislative reorganization and policy outcomes, but suggests the need for future studies to determine if any such relationship might exist. It is concluded that public participation in legislative reform is desirable, provided that a strategy of reform incorporate participation on a basis which maximizes public understanding of proposed changes in the legislative process. In order to be effective, that strategy should be "incremental," permitting public understanding and, if necessary, some adjustment of ultimate goals to effect that understanding. The Maryland experience indicates that there is a willingness of those who control a state legislature to reform it, provided there is receptivity by the members and the public.

This dissertation has attempted to show that the reorganization of a state legislature includes the preservation of valid tradition and the infusion of new procedures to enable political representation to accurately reflect contemporary needs. Herein lies the greatest challenge to those who practice the politics of legislative reform.

ACKNOWLEDGMENTS

This dissertation is the result of seven months of writing and revision, preceded by almost a year of developing a conceptual framework, a plan of historical narrative, and an analysis of the interrelationship between a relatively new area of academic interest--state legislative process--and the practical politics of legislative reform. But the project is more than a manuscript and its preparation. It has been three years of the author's life, which have included organization of a program for reorganization of the Maryland General Assembly. The major parts of that program have been the development of public support for legislative reform through the device of a "citizens commission"; the drafting of a report containing 46 recommendations for legislative reorganization; and actions to have that program implemented by the members of the General Assembly.

This dissertation and the program of legislative reform in Maryland constitute one example of the merger of political science with the "real world" of practical politics. However, the contents of this dissertation, and in a larger sense, this "merger" are based on the efforts, interest, and concern of many more people than the author.

It is, of course, appropriate to repeat the appreciation expressed to many people in the "Statement by the Chairman," from

the Citizens Commission Reports on the General Assembly Reports to the Legislature and the People of Maryland. But I must again thank several individuals by name who were identified in that "Statement." The Citizens Commission members provided a dialogue and stimulus which cannot be measured directly, but from our many formal and informal sessions were planted the seeds of understanding necessary for the writing of this dissertation.

I owe a debt for the success of the project to the volunteer Commission staff. Jonathan L. Alpert, Executive Director of the Commission, was a constant source of information and constructive criticism. The report reflects his work as much as mine, and his understanding of legislative politics accounts for much of the success of the Citizens Commission program. Without the research done by Henry Whaley in the files of the Legislative Reference Service, the report would have had little factual support for some of its recommendations. Mr. Whaley's work has proven far more significant than any of us on the Commission realized at the time of the report. His knowledge of the Reference Service, as the principal supportive agency of the Legislature, provided the Commission with valuable data and insight into the actual workings of the Assembly committees, the Legislative Council, and the assignment of bills to those committees and the Council. I also wish to thank Daniel Riker, who, as Baltimore Bureau Chief of United Press International, brought the work of the Commission to the public's attention through his wire service reporting.

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To Dr. Francis E. Rourke, Chairman of the Political Science Department, I express appreciation for understanding the problems of a graduate student and, at the same time, making it clear that Johns Hopkins demands no less than a high standard of graduate work. His knowledge of state and local government has been of real assistance in this dissertation.

For dialogue, ideas and discussion I am indebted to two people. Robert O'Connor, former student in the Johns Hopkins Political Science Department, is now doing graduate work at the University of North Carolina. As Research Director for the Citizens Commission on Maryland Government (permanent successor to the General Assembly Commission) during the summer of 1968, he offered many worthwhile suggestions for the academic orientation of the dissertation. My discussions with him as a fellow student were helpful, as were those with Louis Silber, University of Maryland, who is writing a term paper comparing the Citizens Commission and Eagleton Institute reports.

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Many governmental and political leaders in the State of Maryland deserve thanks for their interest, advice, and support of legislative reorganization. Indirectly, through their knowledge of the field, they have assisted in this dissertation. They have been of direct assistance through countless formal interviews and

informal discussions. Access to these individuals has, I hope, given these pages a relatively unique and original flavor. To all members of the General Assembly and other Maryland government officials whose names appear in the text or footnotes, I extend my appreciation.

Specifically, I wish to acknowledge the former Speaker of the House of Delegates and now Governor of Maryland, Marvin Mandel, who has given me the benefit of his long experience in the Legislature and who has exercised skillful political leadership in implementing many recommendations for legislative reorganization. Others within the General Assembly who have given much time and encouragement are Senate President William James, Senator Blair Lee III, Senator Roy Staten, and House Judiciary Chairman Thomas Hunter Lowe. I am also grateful to Senator Joseph D. Tydings for his encouragement to undertake the reorganization study of the Maryland Assembly.

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My thanks to the preceding list of individuals in no way commits them to share in the errors that may be present in this dissertation. Those errors are in the sole and rightful possession of this author.

Finally, I wish to thank those who in many ways were really responsible for this manuscript being written at all. To Miss Remi Shannon I can only say that her typing of, and interest in, the second draft made it possible to meet a time deadline. Her enthusiasm for the project also helped me keep my sanity as that deadline neared. Mrs. Ruth Kimmerer, who has made an art out of typing doctoral papers, has done the finest possible job in the final draft.

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PART ONE

THE STATE LEGISLATURE

CHAPTER I

INTRODUCTION: MODERNIZATION OF STATE LEGISLATURES BY THE POLITICS OF REFORM

Until comparatively recent times, most studies of American state legislatures have been one of two types--the descriptive or the normative. The descriptive is inclined to present an analysis of size, session, salaries, rules of procedure, and the duties--constitutional and statutory--of presiding officers, floor leaders and committee chairmen. The normative usually decries the low estate into which legislatures have fallen and prescribes sweeping recommendations for constitutional, organizational and procedural improvements which, if adopted, should make the legislative process more "efficient," "honest," and "responsive to the people."

Neither method of analysis constitutes a complete picture of the political dynamics of the American state legislature. These dynamics of decision-making and policy formation are not clearly revealed through a technical description of formal procedures no matter how detailed or accurate. Neither are the dynamics in a state legislature clarified by generalized attacks on a legislative operation without a detailed exposition of how it works in practice and how the recommended changes can improve existing procedures.

Instead of either a descriptive or prescriptive approach, this dissertation analyzes the politics of reform in modernizing

the Maryland General Assembly from 1966 to 1968, based on two premises: (1) the legislative process is political in nature and (2) a lack of political responsibility has caused many state legislatures to become the target of reformers. This study of the politics of legislative reform focuses on the behavior of political elites, including legislative and other state government leaders, as well as individuals and organized groups promoting change in the legislative process of a particular state--Maryland. Political elites, as contrasted with the mass public, are the focus because these elites actually have the power to and do effect political change. Modernizing the Maryland Legislature through improvement of constitutional provisions, organization and administration, or procedures is political change because the process of modernization itself requires interaction between the reformers and the holders of political power. This interaction reveals the dynamics of both reform politics and the legislative process itself.

The author's relationship to the modernization of the Maryland General Assembly requires an explanatory note not always necessary in the introduction of an academic study. For the three-year duration of this study, the author served as chairman of a "citizens commission" (the Citizens Commission on the General Assembly) that prepared a series of detailed recommendations--forty-six in all--designed to improve the organization and procedures of the State's Legislature. The supporting evidence for those recommendations of constitutional, administrative and procedural change was

a research program which included: (1) examination of the then-existing Maryland legislative system; (2) comparison of that system with the legislatures of other states; (3) use of public hearings to gather information about the General Assembly's operations and weaknesses from its leaders and members as well as other knowledgeable government officials; and (4) analysis of how the recommendations for change might improve Maryland's legislative procedure.

A note of explanation is also necessary for this dissertation's use of public hearings as a means of explaining the politics of legislative reform. The testimony gathered during these hearings, often supplemented by personal interview, is significant in part as a description of Maryland's legislative process, but more so as an indication of the changes to which a political elite is willing to commit itself. The publicly stated rationale for those changes may often be significant when compared with the private reasons for which a legislator may be willing to adjust the system which has given him the political power he holds. The examination of public testimony by political leaders also serves to explain the use of the hearing as a means to generate public support for legislative modernization, as well as to explain the nature of the General Assembly's operations.

The relative lack of studies comparable to this one necessitates integrating a description of Maryland's legislative process with both recommendations on how to improve that process and the methods employed by reformers and legislative leaders to implement

those recommendations. In addition to the Citizens Commission, reformers who participated in modernizing the Legislature have included the Eagleton Institute of Rutgers University and the members of the Maryland Constitutional Convention, particularly that Convention's Committee on the Legislative Article. The reformation of the Maryland General Assembly has been no less dependent upon these two political reform groups than on the work of the Citizens Commission. Reform of a governmental institution is the product of and interaction between many groups which may operate from different philosophical bases and which may employ different methods in achieving their ends. More information and understanding about the politics of legislative reform in Maryland is acquired through an analysis of the similarities and differences among these three interest groups operating in the legislative system, even though they are not part of the Legislature itself. Because of the author's relationship to the Citizens Commission program, more emphasis will be placed on that program and its implementation. But the analysis will be in relation to the total process of legislative reform in Maryland from 1966 through 1968.

Legislative modernization in Maryland from 1966 to 1968 has a unique characteristic that makes it possible to analyze recommendations for change and, perhaps more important, to examine implementation of many reform proposals and the failure to implement others. In a short span of three years, the politics of

legislative reform has been a relatively complete process in Maryland, from (1) planning and recommending a program to (2) generating public and legislative support, and, finally (3) obtaining legislative action on proposals to alter the operations and procedures of the Legislature.

The only incomplete facet of legislative reform in Maryland has been the failure to implement changes in the Legislative Article of the State's Constitution. That failure was caused by the defeat of a proposed new charter for Maryland at statewide referendum on May 14, 1968. Contrasted with constitutional revision, internal reorganization of the Legislature has proceeded with relative success through the programs of the Citizens Commission and the Eagleton Institute. In the author's opinion, a significant reason for the positive results of these two groups, as contrasted with the Constitutional Convention program, is the strategy of implementation.

The administrative and procedural reform of the Legislature has been accomplished largely through a combination of developing (1) public support through the news media and (2) confidence of the political elites, General Assembly leaders and members on whom the decision to implement proposed changes actually rested. Constitutional revision was attempted primarily through the Convention's reform of assuming an adversary relationship to these political elites.

The characteristic of analyzing both the plans for reform and implementation of or failure to implement these plans offers opportunity for relatively complete analysis of political action in support of legislative reorganization. The rationale behind both support of and opposition to this reorganization by political elites merits analysis and appropriate conclusions.

In addition to analyzing the conduct of political elites, this dissertation will also state what may be the effect of changes made in the organization and procedures of the Maryland General Assembly. A speculative generalization might place reform of the Maryland legislative process at about the same point in time as the United States Congress when it passed the 1946 Legislative Reorganization Act. Under this act, the Congress established major administrative and procedural reforms in order to meet heavy postwar demands. As recently as the 89th Congress, reorganization bills (S355 and HR 2594) were introduced to improve operations of the National Legislature. Among the improvements recommended were reforms in committee procedure aimed at processing legislation more quickly; more complete budgetary data for the finance committees and increased size of professional staffs; and more comprehensive regulation of lobbying. The legislation passed the Senate and subsequently was tabled by the House Rules Committee. On July 31, 1968, the legal life of the special committee on the organization of Congress expired.¹

¹Congressional Quarterly (September, 1968), p. 2200.

Recently, scholars have begun to examine the effects of reorganization on our national Senate and House that may have useful parallels for their counterparts in the fifty states. In "The Institutionalization of the U.S. House of Representatives," Nelson W. Polsby argues that "as an organization institutionalizes, it stabilizes its membership, entry is more difficult, and turnover is less frequent. Its leadership professionalizes and persists. Recruitment to leadership is more likely to come from within, and the apprenticeship period lengthens. Thus the organization establishes and 'hardens' its outer boundaries."² The implication of Polsby's observation for the politics of reforming state legislatures is that reorganization might, although not necessarily, create a more static, less responsive legislative branch of government. Where possible, this dissertation will examine the potentialities for that development in Maryland, particularly in reference to General Assembly leaders' actions to implement proposals for reform and their views about the changes reorganization will create.

As analyzed in Chapters VII and XIII, a great concern of Assembly leaders was that institutionalizing the legislative committee system would weaken the personal leadership they believed necessary to manage state government. Concern would be expressed at Legislative Council hearings that the legislative process would

²Nelson W. Polsby, "The Institutionalization of the U.S. House of Representatives," American Political Science Review, LXII (March, 1968), 145.

shift, in Polsby's words, "from particularistic and discretionary to universalistic and automated decision making."³ As the President of the Maryland Senate said, "If we move from the generalist to the specialist method of legislative study and bill analysis, we, as policymakers, may lose control of what the policy should be."⁴ Because legislative modernization is still an ongoing process in Maryland, this dissertation does not measure output after, as contrasted with before, the enactment of reorganization proposals--many of which are still under examination by the General Assembly. However, it will be shown that a centralized leadership, not supported by adequate professionalization of legislative procedures and research procedures, has been at least partially unable to manage the General Assembly in a manner commensurate with the complex economic and social environment of Maryland in the 1960's.

³Ibid., p. 160.

⁴Senator William James, President of the Maryland Senate, in a hearing of the Maryland Legislative Council, August 18, 1968.

CHAPTER II

THE CHARACTERISTICS AND FUNCTIONS OF A STATE LEGISLATURE

A. REPRESENTATION

Representation of diverse interests and the resolution of conflict are perhaps the principal functions of the state legislature. It is the quality of that representation that determines the validity of the state legislature as a democratic institution in an era of increasing demands upon state government and its legislative process. According to Jeremy Bentham, the duty of the legislature to govern in the interests of the greatest number is best insured by a public to which it is answerable and by which it is elected. Theories of representation have ranged from the Hobbesian view that representatives "have authority from them so far as is in their Commission, but no further,"¹ to the famous address by Edmund Burke to the electors of Bristol that "authoritative instructions, mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest

¹Thomas Hobbes, Leviathan (London, 1953; First published 1651), p. 84.

conviction of his judgment and conscience . . . arise from a fundamental mistake of the whole order and tenor of our Constitution."²

In Hobbes' view, political action is possible only if "authority" is granted--rulers may dispense authority either freely or in limited amounts, restricting the representative (or, in contemporary terms, the legislator) in how much freedom he actually has.

Although it may be possible to authorize without limitations under Hobbes' theory, the connotation usually means limited authority.³

Edmund Burke's elitist view holds that representatives--in the context of representing the public--determine and enact laws which are best for the nation. Because they hold their positions by virtue of their superior training and wisdom derived from experience, these representatives make their judgments not on the basis of a mandate or constituency view, but rather from rational parliamentary deliberations.⁴

In the modern context, national or state legislators may take either a limited or a broad view of their power to represent a constituency or perhaps a moderate and fluctuating stance, depending upon the issue. But it is the quality of representation, a central

²Heinz Eulau, John C. Wahlke, William Buchanan and LeRoy C. Ferguson, "The Role of the Representative: Some Empirical Observations on the Theory of Edmund Burke," American Political Science Review, LIII (1959), 742-746.

³Hannah Pitkin, The Concept of Representation (University of California Press, 1967), p. 14.

⁴Ibid., p. 168.

concern of this dissertation, that is at stake in the contemporary state legislative process.

1. RESPONSIVENESS

"Responsiveness," "responsibility," and "majority rule" have been described as basic to the analysis of democratic political institutions. As J. Roland Pennock has observed, "responsiveness" is, at best, an elusive concept.⁵ Pennock has provided a general definition of responsiveness as "reflecting and giving expression to the will of the people."⁶ The basic limitation of that definition is that the will of the people is neither sharply defined nor unified. In pluralistic institutions that reflect a cross-section of views and interests, group conflicts are a characteristic condition. And, in that connection, Jewell and Patterson note that "one of the major functional consequences of the legislative system is the management of political conflict."⁷

If quality of representation includes responsiveness, and responsiveness is a reflection of divided public opinion, how can any effort at reforming or modernizing the state legislative

⁵J. Roland Pennock, "Responsiveness, Responsibility, and Majority Rule," American Political Science Review, XLVI (September, 1963), 790.

⁶Ibid.

⁷Malcolm E. Jewell and Samuel C. Patterson, The Legislative Process in the United States (New York, 1966), p. 9.

process produce a better grade of representation and more effective management of political conflict?

The answer does not lie in producing a unified public opinion, but in making the legislature "open" and receptive to the kinds of inputs that are considered integral parts of the political policy process of American state government by such recent scholars as Thomas R. Dye.⁸ Dye classifies these inputs as demand on or support of the political system. Demands occur when individuals or groups, reacting to perceived environmental conditions, act to promote goals or decisions or, in the context of the state legislature, to stimulate enactment or defeat of and often inaction concerning legislation. Support is provided by the cooperative participation of individuals or groups through obedience to laws, payment of taxes, and acceptance of election outcomes.⁹

David B. Truman has predicated his examination of the quality of legislative representation on the concept that American political life is, to a great degree, dominated by the activities of interest groups. In analyzing the dynamics of access in the legislative process, Truman notes that "especially in the United States, the legislature, far more than the judiciary or the executive, has been

⁸Thomas Dye, Politics, Economics, and the Public (Chicago: Rand McNally & Company, 1966), p. 1. The Dye conceptualization of model for analyzing policy outcomes in American state politics is depicted on p. 6. This model is based on David Easton's "An Approach to the Analysis of Political Systems," World Politics, IX (1957), p. 383.

⁹Ibid.

the primary means of effecting changes in the law of the land."¹⁰ While Dye credits environmental factors (such as industrial power, education, income) with more influence on policy outcomes than rearrangement of the political system," Truman observes that the manipulation of constitutional, administrative, and institutional arrangements are part and parcel of a fluid legislative process. It is a second contention of this dissertation that to be responsive the state legislature must be a sufficiently flexible institution in order to meet the demands of an increasingly complex economic and social order.

2. RESPONSIBILITY

Pennock describes "responsibility" as one of the basic concepts used by political scientists in appraising the operation of governmental institutions. He gives the term two separate meanings, neither of which in his judgment is an extension of the other.¹² First, responsibility means accountability in the sense that elected officials are answerable to the public which placed them in office. A legislature is responsible when its length of session or the term

¹⁰David B. Truman, The Governmental Process (New York: Alfred A. Knopf, 1965), p. 321.

¹¹Dye, op. cit. Dye summarizes the effect of economic development and other environmental factors on policy outcomes, pp. 284-292. He concludes that the environment has a greater impact than the system components of institutional arrangements, interparty competition and reapportionment. These political system components are summarized on pp. 292-301.

¹²Pennock, op. cit., pp. 796-797.

of office of its members is subject to control within limits by the electorate. In addition to a legislative body or the entire government as an entity being accountable to the voters, this first definition of responsibility also includes the accountability or identification of particular individuals or groups who establish or execute government policy. In the legislative context, the electorate should be able to fix responsibility for a decision made on the floor, in committee, or as part of the more informal procedures of a state assembly.

A second meaning of responsibility is explicability or rational explanation of the conduct of government and its officials. Again, in the legislative context can the public understand the process by which a bill is passed or defeated in addition to being able to fix responsibility for that decision? A third contention of this dissertation is that the state legislature should have considerable rationality in its methods of analyzing and disposing of legislation.

A "responsible" method means passage or rejection of a bill based on the relevant facts by complete evaluation from its introduction to committee assignment and evaluation and, finally, floor debate and decision. Comprehensive analysis is as important as final vote--in a "responsible" policy-making body, the latter is predicated upon the former.

Pennock notes that the concept of responsibility may impose some limitations upon absolute majority rule and responsiveness: "A government that responds immediately with positive action to

majority wishes cannot take time for full ascertainment of facts, for adequate analysis, for calculation of consequences, or weighing of values."¹³

3. COMPLEXITY OF THE LEGISLATIVE PROCESS

Pennock's generalizations about responsibility refer to "government" in the broad sense. What can be said of the legislative process, once described by Professor Bailey as "almost unbelievably complex"?¹⁴ In the state legislative system,¹⁵ a bill is drafted by the legislator himself, or more likely, a research staff, an administrative agency, a pressure group, or a member of the Governor's legislative staff. If the bill is "important" from the standpoint of cost or program impact, it will be the subject of committee hearings and contact between representatives of the executive and legislative branches. Staff specialists, where available in the state legislative system, will assist in drafting and revision of legislation. And, finally, legislation is subject to floor action and conference amendments. Final votes may reflect constituency and

¹³Ibid., p. 797.

¹⁴Stephen K. Bailey, Congress Makes a Law (New York, 1950), p. 236.

¹⁵The author employs the definitions of "legislator," "legislative system," and "legislative process" used by Samuel C. Patterson in Toward a Theory of Legislative Behavior (Stillwater, Oklahoma, 1962), pp. 16-38, and Jewell and Patterson, The Legislative Process in the United States (New York: Random House, 1966), Chapter 1. The legislature is defined as "those individuals who are elected as members of the formal legislative bodies prescribed by national and state constitutions." The legislative system refers to "those individuals and groups outside the legislature as well as legislators themselves (e.g., administrative agencies, constituency and lobby, political parties). The legislative process refers to "movement in the legislative system from one point in time and space to another."

interest group pressures and often in a two-party state, party positions. Although a "responsible" legislative process in terms of accountability and explicability may prevent rash determination, the complexity of legislative decision-making may conceal or blur the identity of the accountable legislators and other interested parties.

The complexity of the legislative process is not necessarily clarified by the role of political parties. According to Jewell and Patterson, "where a single party consistently has a monopoly or an overwhelming majority of legislative seats, the party is not a reference group for legislative voting."¹⁶ Does the legislative process become more visible by party competition? Although Professor Frank Sorauf found that party loyalty played a significant role in Pennsylvania's competitive two-party legislature, he also noted that "the inroads of constituency on party cohesion appear as clearly in Pennsylvania as elsewhere. In those instances of sharpened party differences--the roll calls in which the majorities of the two parties oppose each other--legislators leave the party to placate constituency pressures exaggerated by close elections or a threatening socioeconomic electoral base."¹⁷

¹⁶Patterson and Jewell, op. cit., p. 422. See Table 6.1a, p. 143, in which state legislatures are classified according to the degree of one-party control from 1947 to 1966. Maryland is identified as "a state with one party (Democratic) dominant" where the same party controlled both houses throughout the period but did not always control the governorship, and minority party occasionally had over one-fourth of the seats in at least one house.

¹⁷Frank J. Sorauf, Party and Representation: Legislative Politics in Pennsylvania (New York: Atherton Press, 1962), p. 145.

If a legislator's decisions are not always derived from his party affiliation, then it is logical to examine the impact of the legislature as an institution and the legislative system upon decision-making in the legislative process. A state legislature's organization and procedure may reduce the possibility for both "responsive" and "responsible" decisions. In some instances, the legislative decision that is responsive to a majority view may not be fully explicable or rational when its long-range impact is weighed. In other situations, the legislative decision that responds quickly to majority opinion may have undergone comprehensive analysis and be traceable to the accountable decision-makers.

Modernization of organization and procedure has been offered as a means of improving the quality of representation in state legislatures. In the context of "responsive" representation, reorganization should improve the ability of the legislature to receive demands and pressures from the public and to respond to those inputs. At the same time, being "responsible" the legislature should be able to enact or reject legislation on the basis of rational choice and complete information.

The criteria of responsiveness and responsibility are met if modernization and reorganization create the environment for the legislature: in Professor Wahlke's words, "to receive and actively solicit both technical and political intelligence about the demands and the policies proposed to meet them; and through deliberation and debate, both formally and informally, in every other stage of the

legislative process, to formulate the most 'effective' decision to satisfy both the technical and the political needs involved."¹⁸

B. FORMALISM AND REALISM

The criteria of responsiveness and responsibility as broad components of representation are difficult to achieve in a typical state legislature. Today, the constitutional framework of most assemblies is geared to a nineteenth century "modus operandi" wherein a basic distrust of and subsequent limitations upon legislative power emerged from the abuse of that power in the throes of an expanding Republic and the chaos of Civil War. And, today, the organization and procedures of many of these assemblies are designed to meet the demands of another era when the farmer and the small-town lawyer could transact business in one month every other year.

Generalizing about the characteristics of the American state legislature is difficult. No two assemblies are exactly alike as a formal institution and as a political battleground from which petty bickerings and corrupt politics can emerge, or where major policy decisions with long-range impact and high cost are made. Generalizing about the modernization of a particular state's legislature also has limited utility because the "reformer" or "modernizer" must operate within a framework of "the art of the possible."

¹⁸ John C. Wahlke, State Legislatures in American Politics (The American Assembly, Columbia University, 1966), p. 153.

Analysis of the organization and procedures of the Maryland General Assembly or any state legislature should incorporate the realities of legislative and political life. Among them are the bargaining process among legislators in their various roles; the lack of party cohesion; the climate for reform of governmental institutions in the state, including the receptivity of political leaders to modernization proposals that may alter their possession of political power; and the lack of deliberate speed and administrative precision with which legislative decision-making occurs, or what Charles Lindblom has called the "incremental" process. These realities have not necessarily prevented modernization of Maryland's, or any other state's, legislature, but they do place institutional and procedural change in the political context where it realistically belongs. John Wahlke has emphasized that, for the most part, changes in legislative organization and procedure, where they have occurred, appear to have come piecemeal in response to rather limited demands justified on what might be called "professional" grounds rather than in response to strident reformist pleas.¹⁹ His generalization is applicable to the Maryland situation.

This dissertation analyzes the modernization of organization and procedure in the Maryland General Assembly from 1966 through 1968. This three-year period has included constitutional revision

¹⁹Wahlke, Eulau, Buchanan, and Ferguson, "The Legislative Arena," The Legislative System (New York: John Wiley & Sons, 1962), pp. 135-216.

by the Governor's appointed preparatory commission and an elected representative convention followed by voter rejection of the draft document which contained provisions for a lengthened session, increased salaries, new methods of representation, periodic reapportionment, and additional fiscal supervision of the executive branch.

But the analysis is only partially constitutional because many of the changes that can improve the operations of a state assembly come from within the legislative institution itself. Among the more important internal changes in organization and procedure are alteration of the rules to expedite the introduction and assignment of bills; reorganization of committees to permit more thorough and less manipulated review of legislation; enactment of enforceable conflicts-of-interest legislation to regulate legislators' professional and business conduct; and increase of research and administrative staffing to permit more comprehensive preparation and study of legislation. And in support of a modernized legislature, this dissertation analyzes the methods of promoting a more favorable climate for public understanding of the legislative process.

The history of state legislatures in the United States, and of the General Assembly in Maryland, is one of both innovation and ineffectiveness of the representative branch of state government. In this era of the executive, the legislature has not lost its "spittoon" image--as the beneficiary of an antimonarchical tradition in the colonial period, state assemblies have found their own customs

and practices unable to meet the demands of a large, industrial, urban and therefore complex society. Within this new economic and social framework, the executive branch of government that administers public policy has become the repository of power, both by necessity for political decision and failure of the legislature to adapt itself to change.

In support of the broad function of representation, what are the characteristics of the state legislature as an institution and as a changing process? What are the operations and procedures unique to the Maryland General Assembly, and what is the political environment in which this particular legislature must perform its law-making and decision-making functions? The answers to these questions are fundamental to an understanding of how the legislative process can be modernized. Too many scholars and government reorganizers do not know the condition of the patient on which they operate. This defect in knowledge is equally true of the legislative revisionist.

Nowhere do the realities of the legislative process differ more from the formal, legal framework than in the organizational structure. Most state assemblies have administrative similarities of limited sessions, elected presiding officers, appointed committee chairmen, a variety of standing committees, and deceptively simple rules of procedure. In practice, however, these legislatures differ greatly in operating methods and amount of power. And although the two major parties are usually represented in the membership, the

degrees of inter-party competition and intra-party factionalism vary from one legislature to another. Party discipline may prevail in a competitive system where the parties are evenly matched in numbers of legislators. When one party dominates, the legislative organization and procedure may reflect geographic or factional control. But neither discipline, geography nor factionalism is a constant factor in the state legislative equation.

Although the formal structure and organization of the legislature differ from the dynamics of the legislative process, the dichotomy becomes artificial in practice. Formalism and realism serve one another in a legislative system. A bland rule of procedure can be the device to pry a bill out of committee or bury it in committee. The power of the speaker to assign a bill can be the power to establish a new governmental policy or perpetuate an old one. In other words, formal procedures can alter public policy in the legislative arena.

Formal structure and operational realities, even though different, do affect one another and should be examined in that context. Without recognition of this interrelationship, legislative modernization is only theoretical reorganization.

As an institution and a process of government, the state legislature can be analyzed by function, structure and procedure, and decision-making process.

C. ENACTMENT OF LAW

In support of the broad concept of representation, and from a legal standpoint, another prime function of state legislatures is the enactment of law. But this term fails to reveal that, to an increasing degree, legislation is the product of groups within the legislative system that press their wishes, demands, and recommendations upon the elected lawmakers. Many bills introduced reflect the programs of the executive branch of state government. By Jacob and Vines' recent analysis, bills considered by American state legislatures had grown from 47,000 to 104,000 in ten years-- a clear reflection of the growth of formal statutory control in an increasingly urban and industrial society.²⁰

In Maryland, the volume of legislation increased greatly from 1958 to 1968. Ten years ago, 177 bills were considered by the House of Delegates and 146 by the Senate in a 30-day session. In 1968's 70-day meeting, the House acted upon 1,373 pieces of legislation, and 693 bills were reviewed by the Senate.

A literal examination of the constitutional and statutory function of the state legislature fails to disclose the dynamics of the legislative process. In the opinion of most laymen, the enactment of statutes consumes most of the time of a legislative body. Clearly, the scope in subject matter and the number of laws, both regulatory

²⁰ Herbert Jacob and Kenneth N. Vines, Politics in the American States (Canada: Little, Brown & Company, 1965), pp. 151-152.

and service-oriented, are enormous. But it would be an oversimplification to assume either that the legislature has no other function than to pass laws or that the legislature's output constitutes the complete compendium of law for any state. The state constitution, over which the legislative branch has limited control, is the basic source of law, and the courts, despite the fiction that they only interpret statutes, make decisions that alter economic, social and, to an increasing degree, political conduct.

A more realistic way to examine the lawmaking function is to recognize that the state legislature is constantly seeking compromises to bills introduced or proposals offered by individual members. As an example, the tax legislation passed in the 1967 Maryland legislative session constituted a modification of the more stringent equalization provisions of the ill-fated 1966 Cooper-Hughes bill.²¹ Governor Spiro T. Agnew has emphasized that the 1967 law

. . . was not the ideal tax reform measure for Maryland; in fact, there were compromises that weakened the financial concept of equalization for less affluent counties of the State. But the sponsoring legislators and I, as Governor, had to compromise on the equalization provisions in order to get the votes of the wealthy but reasonably enlightened counties such as Prince George's and Montgomery. Baltimore City did not get

²¹The Cooper-Hughes tax reform program (SB-13) outlined a complete overhaul of Maryland's fiscal structure, including requests for a \$98,154,900 income tax increase and a \$68,229,400 State assistance program for local governments. Removal of certain tax inequities--including more uniform regulation of business--was part of the bill. Also, the bill strengthened state school aid procedures and eliminated tax overlapping by reserving the income tax for the State and the proceeds from the Maryland sales tax to local subdivisions. For an analysis of the Cooper-Hughes legislation, see The Sun (Baltimore), March 23, 1966.

what it wanted from this bill, but it would have gotten even less without it. It is clear that compromise has to occur in the important bills a legislature passes--this has been one of the most important impressions I've gotten in working with them.²²

D. LEGISLATIVE OVERSIGHT

The Agnew observation points out that while compromise of conflicting interests is part of the lawmaking function of the state legislature, it is also part of the legislative oversight function. Little supervision of the administration of government can occur without an awareness of the relationship between the legislative and executive branches. Some scholars and practitioners have maintained that state legislatures, under their current operating procedures, are better able to monitor and evaluate the executive branch than to initiate policy.²³

The most direct method of legislative control over the executive branch is the provision of legislative review over administrative decisions. This power is exercised by the Michigan Legislature whereby it "reserves the right to approve, alter, suspend, abrogate any rule promulgated pursuant to the provisions of this act." In other words, all regulations prepared by executive agencies must be

²² Interview with Sprio T. Agnew, Governor of Maryland, March 29, 1968.

²³ For general analysis of limitations upon state legislative control over the budgetary process, see Belle Zeller (ed.), American State Legislatures (New York, 1954), pp. 177-179. For proposals on how to strengthen the legislative oversight in the budgetary and technical fields, see Jesse Unruh, "Scientific Inputs into Legislative Decision-Making," Western Political Quarterly, XVII (Sept., 1964), pp. 53-60.

submitted to each legislator before each regular session, and between sessions the clearance process is performed by a joint committee on administrative rules until the next legislative session.²⁴

Legislative review of administrative decisions has been criticized as injecting the state assembly too much into mechanics and technicalities when its real power is over the purse and not the details of agencies' rules.²⁵ It has been suggested that legislative review of the state budget is the main constitutional and procedural device for supervision of the executive branch. In most states, budget-making power resides in the governor, and such is the case in Maryland. But the legislative response to that authority differs vastly from state to state. Maryland's review of the budget has been concentrated primarily during the session, but as a result of reorganization programs to be analyzed in subsequent chapters, the General Assembly's initiative will increase between sessions by improved staff and research capability for continuing and more detailed examination of the governor's budget.

²⁴For information on the Michigan system, see Ferrel Heady, Administrative Procedure Legislation in the States (Ann Arbor, 1952), pp. 49-62. Administrative procedures acts containing legislative review provisions are operative in the states of Michigan, Nebraska, Virginia, Connecticut, and Kansas.

²⁵Interview with Jesse M. Unruh, California Assembly Speaker, April 14, 1967; he emphasized that "the real power of a state legislature is in its independent capacity for fiscal review on a year-round, and even competing basis, with the Governor. There isn't the same power merely by the capability to nit pick every regulation put forth by state agencies."

How much policy initiative Maryland legislators will actually exercise when given more detailed research information remains to be seen, modifications in budgetary oversight having been implemented in April 1968. Maryland's procedures have been rudimentary compared to those used by New York and California. In New York, the chairman of the Senate and House appropriations committees and staffs participate in executive budget hearings--"in fact, fiscal leaders in both Houses usually confer with the governor before he submits the budget. Legislative hearings are not emphasized to a great degree because the key people in the Legislature have gotten their changes and ideas in during the executive hearing process. Governor Rockefeller has been more careful in developing liaison than Harriman was, but the executive is pretty well checked during the hearings he conducts. If there is unresolved disagreement, a floor fight can result, as opposed to separate legislative hearings where the testimony would be repeated all over again."²⁶

One method of legislative oversight that has become increasingly popular is the California system consisting of a Joint Legislative Budget Committee under the staff direction of a legislative analyst solely responsible to the Assembly. According to California

²⁶ Interview with Al Abrams, Secretary of the New York State Senate, August 24, 1967, during inspection trip of legislative facilities in New York, North Carolina, Michigan, and Illinois. The author was a participant on this trip sponsored by the Citizens Conference on State Legislatures.

Assembly Speaker Jesse Unruh, "the effectiveness of the California system is predicated upon the adversary position of the legislature, in relation to the governor, on financial matters. Of necessity there is competition, particularly when the joint budget committee prepares its own alternative to the executive budget, submits it at the same time as the governor, and is prepared to defend it on the basis of study made throughout the year."²⁷

Despite the recent emergence of procedures for more legislative supervision over the executive branch in the American states, an increase in the power of the state governor has taken place largely because of the complexities of administration. And, by reason of malapportionment of the majority of state assemblies during the 1950's and early 1960's, added credibility was given to the view that the governor is the most representative public official for the entire electorate. V. O. Key has emphasized that "many factors have conspired to produce the low status of the American state legislature. Yet, among these factors, its unrepresentative character must be assigned a high rank. A body that often acts reluctantly under executive pressure and whose chief purpose seems to be one of negation cannot but in the long run lose prestige. A body that is condemned by its constitution to defense of a partial

²⁷ Interview with Speaker Jesse Unruh, *op. cit.* In a speech before the Young Democratic Clubs of Maryland in April 14, 1967, Speaker Unruh, in criticizing the administration of then recently elected Governor Ronald Reagan, said that the oversight advantages of the California system "were never more obvious than this year when a new, inexperienced administration submitted an admittedly incomplete, ill-considered budget" (Speech text, p. 7).

interest in the state becomes, if not a council of censors, something other than a representative body in the conventional sense."²⁸

E. MANAGEMENT OF CONFLICT

In enacting laws and exercising legislative oversight, as functions in support of representation, the state legislature is also exercising another function--what has been called the "management of conflict."²⁹ Management of conflict is broader than the compromise of different bills in committee and on the floor to create legislation that will command the support of the majority. And this broad function is not only exercised by members of the legislature, but also by others within the "legislative system,"³⁰ including those individuals and groups who have a political stake in legislative decisions and who work with or against members to promote their interests. They may be interest groups or lobbyists, political party officials, administrative and research staffs, and constituents. If the legislative process is at all changing and developmental, then that process must incorporate activity from without, as well as within an assembly's elected membership. And that activity when viewed in its totality, reflects the efforts to resolve the conflicts of a pluralistic society.

²⁸V. O. Key, American State Politics: An Introduction, pp. 76-77. Reapportionment, as a factor leading to the lack of public credibility of the Maryland General Assembly, will be analyzed in Chapters III and IV of this dissertation.

²⁹Malcolm E. Jewell and Samuel C. Patterson, The Legislative Process (New York: Random House, 1966), pp. 9-15.

³⁰Ibid., p. 6. The legislative system refers "to those individuals and groups outside the legislature as well as to the legislators themselves."

F. LEGITIMIZING THE DECISIONS OF GOVERNMENT

Although conflict remains a part of the legislative system, there are also the supportive functions that the system fulfills. As a representative body, the state legislature tends to make legitimate the decisions of government, under a theory that legislators, being "close to the people," tend to speak for them and reflect the public mind in a more personal, direct way than other officeholders who may operate from a broader political base than a legislative district. According to Jewell and Patterson, "the constitutional and political foundations of the legislature and the orderly procedures that it follows, make legislative action appear legitimate; it has the quality of rectitude."³¹

The representative quality of the state legislature has been identified as being able to provide the channels for, and mediate the interaction among, the various participants and interest groups in the legislative system.³² Although the legislature has historically provided the support for the governmental process through a representational link to the people, the complexities of modern economic and social activity have begun to erode the traditional ethos of representation. The inefficiency, complicated rules and

³¹Jewell and Patterson, op. cit., p. 13.

³²For further analysis of the representative quality of the legislative branch of government as compared with that of the executive and judicial, see Bertram M. Gross, The Legislative Struggle (New York, 1953), and Myron J. Lefcowitz, "Toward a Theory of Representation between Groups," Social Forces, XL (1962), pp. 336-341.

procedures have combined with parochialism on the part of individual legislators to produce state assemblies allegedly unable to meet today's unfinished public business.

As expressed at the beginning of this chapter, two central concerns of this dissertation are the quality of representation in the state legislature and the ability of that branch of government to be fluid and dynamic within the context of an orderly and stable kind of political change. Prior to reapportionment becoming a political fact of life in the Maryland General Assembly (Chapters IV and V) and throughout the nation, legislative representation could be classified as inadequate on its face. But, in the post-reapportionment era, it has become evident that the state legislature in Maryland and elsewhere is still unable to operate as an innovative or sometimes even supportive branch of government.

PART TWO

A CHANGING MARYLAND

CHAPTER III

MARYLAND: HER POLITICS, THE GOVERNOR, THE LEGISLATIVE
PROCESS, AND CAST OF CHARACTERS

A. HER POLITICS

Maryland has often been identified as "America in Miniature"--the mountainous western area more akin to the coal regions of Pennsylvania than to a state that is traditionally considered "southern"; the Eastern Shore, its plantation-like estates and Atlantic coastline; Southern Maryland and the tobacco belt; the Washington, D.C. "bedroom" counties populated by those whose loyalties are as much to their federal government as to the state in which they live; the Chesapeake Bay, one of the nation's major waterways to the port of Baltimore with its complex urban, social and financial problems; and finally, the burgeoning suburban counties around Baltimore that house everything from beltways to the "new town" of Columbia and the industrial giants of Bethlehem Steel and Martin-Marietta Corporations.

These different regions account for as much of the diversity and political differences in Maryland as do the political parties themselves. Yet amidst this uneven tapestry appears a deceptively simple political process and relatively stable state government.

Factionalism and political organization in Maryland might appear uncomplicated because of the dominance of an essentially moderate Democratic party. As the political guardian of the state whose roots go back to the Calvert line--John Eager Howard--and the Battle of Fort McHenry, the Maryland Democratic party has in reality been many parties. Before 1932, its Tidewater-southern Maryland reflected and to a certain extent still reflects a conservative Whig heritage of the early 19th century. And prior to 1932, the Baltimore City Democratic party was financed by business and controlled largely by an entrenched "political boss" system.

The bloodless "Roosevelt revolution" of 1932 helped create another Democratic party--one dominated by labor and the liberals. To a certain extent, this is the Democratic party that has sown the seeds for the reform movements that began to press down upon Maryland's relatively apathetic state government in the 1960's. As described with particular reference to the General Assembly in Chapters IV and V, reform would not come easily to the Free State. The minority Republican party, centered primarily in western Maryland and among the more conservative centers of power in Baltimore City, has not been at the vanguard of change, having produced few liberal political leaders. (The most notable exceptions have been the irrepressible Theodore R. McKeldin, the State's two-term governor and twice mayor of Baltimore; and Charles McC. Mathias, elected to the United States Senate in 1968, after having achieved political prominence in the Washington suburban counties.) Therefore,

in order to study Maryland's political system in relation to its more formal government structure, it is necessary to understand the Democratic party, its contradictions and conflicts. Throughout Part Three, those conflicts and contradictions will appear in the process of legislative reform.

Part of the heritage of today's Maryland Democratic party is the "boss system" wherein a few professional politicians promote candidates for public office. From the late 1920's to the mid-1940's, the pattern was similar--"Sonny" McMahon and Jack Pollack in Baltimore City, Streett Baldwin in neighboring Baltimore County, Lansdale Scassar in Southern Maryland, and Colonel E. Brooke Lee in Montgomery County. A baronial and "Bourbon" attitude dominated party politics and policies, and a clearly discernible "modus operandi" produced victorious candidates. Such a candidate was William Preston Lane, Jr., elected governor in 1946. As the organization candidate, he could draw support from the labor wing of the party in Baltimore but still not alienate the more conservative Southern Maryland vote. This political sleight of hand was possible because Lane was also a banker and the scion of a prominent political family. Support from labor and the liberals was generated largely from Lane's consistent support of national Democratic party candidates.

In political terms, the story of Maryland government and attempts to reform that government stem in part from internal divisions within the Democratic party and efforts--some successful and

some not--to prevent this internecine warfare. In 1946, Lane survived because the party bosses ran an unknown moderate-conservative (J. Millard Tawes) to capture the Eastern Shore county unit votes from the right-wing candidate (Streett Baldwin) and, thereby, save the election for the party organization's choice. Although alliances among individual politicians have shifted over the years, an essential thread has been attempts of the conservative and the liberal factions to penetrate and control the broad center of the Maryland Democratic party.

Examples of factional fights within the party are numerous. Sometimes the attack was purely "anti-boss," as was the case with the early campaigns of Baltimore paving contractor George P. Mahoney. Sometimes the attack came from the right as in the 1966 and 1968 Mahoney campaigns and in the 1950 Democratic primary when Millard Tydings emerged the uncertain victor, only to go down to defeat in a general election campaign plagued by the "soft on communism" issue. Republican John Marshall Butler, sponsored by the money interests behind Senator Joseph McCarthy, had finished the senior Senator's 24-year Senate career with the same issue Tydings himself had flirted with in order to quash the 1938 Roosevelt purge. And, finally, the attack might come from the left with a dash of "anti-bossism" thrown in. Such was the situation in the 1964 campaign of the U.S. Attorney Joseph D. Tydings for the United States Senate and the 1966 abortive attempt at the governorship by doctrinaire liberal Carlton Sickles. Tydings was successful and Sickles was not. In both the 1964 and 1966 cases some political

and governmental reforms resulted in Maryland, and in both cases party wounds were inflicted that have not entirely healed.

Perhaps the divisions within the Maryland Democratic party can be better understood by the marginal quality of the State's vote in national elections. In presidential elections from 1896 to 1968, Marylanders have voted more often Republican than Democratic--in 10 of 19 elections. In gubernatorial elections since 1871, the State has predominantly supported the Democrat, voting Republican in only five elections, three of which occurred in 1950, 1954 and 1966. And, in the case of the 1950 and 1966 campaigns, internal strife within the Democratic party gave the elections to Republicans Theodore R. McKeldin and Spiro T. Agnew.¹

B. EXECUTIVE BRANCH

Although the Maryland Republican and Democratic parties are relatively competitive in national election voting, it is within the state and local governments that political power and patronage is basically the Democrats' preserve. And primarily the political process in Maryland centers around the control and management of the executive and legislative branches of the State government. The government of Maryland is not markedly unique in its formal structure; however, its three branches have rather definite political

¹For useful journalistic histories of Maryland political parties, see Frank R. Kent, The Great Game of Politics (New York: Doubleday and Co., 1923), and John H. Fenton, Politics in the Border States (New Orleans: Hauser Press, 1957).

characteristics. Leadership and political dynamics resulting from the activity of Maryland's government leaders are as much a part of the legislative, executive, and even the judicial processes as any formal administrative arrangements. In Parts Two and Three these dynamics will be shown to be an integral part of the Maryland General Assembly.

The executive branch is under the direction of the governor of Maryland. The role of the governor in relation to the General Assembly is analyzed in Chapter VI (through analysis of testimony by former Governor J. Millard Tawes before the Citizens Commission on the General Assembly), but historically the position of the State's chief executive has developed from a minion of royal power to stepchild of legislative control, and currently to a powerful constitutional figure still lacking reorganization powers to completely modernize his branch of government.² Although not a member of the legislative branch, the governor is regarded as the chief lawmaker of the State. Traditionally, he formulates and proposes a series of "administration bills" embodying his legislative program. This program is supported by his electoral mandate and authority as the highest elected official of the State, by his

²For government-sponsored studies of modernization of the Executive Branch of Maryland Government, see Report of the Commission for the Modernization of the Executive Branch of Maryland Government, John Curlett, Chairman (Bureau of Governmental Research, University of Maryland, 1967). Also, see Report of the Constitutional Convention Commission (Baltimore: King Brothers, Inc., 1967), pp. 147-173.

access to the communications media, and by his role as party leader and dispenser of patronage.

Further strength comes from the governor's role as the chief administrator of the State government. He is charged with managing the vast bureaucratic network of agencies, departments, boards, bureaus and commissions that number over 200. Beginning with studies initiated by Governor Albert C. Ritchie in the early 1920's, Maryland governors have recommended reorganization of the executive branch. Most recently, the Sobeloff-Stockbridge Commission on the Administrative Organization of the State (appointed by Governor McKeldin) and the Curlett Commission for the Modernization of the Executive Branch of Maryland Government (appointed by Governor Tawes) have proposed steps to strengthen the governor's hands by concentrating authority and responsibility, by integrating functions of agencies and by substituting single administrative heads for boards and commissions of agencies that fulfill purely administrative responsibilities. At the writing of this dissertation, many of these proposals have not been implemented.

The governor possesses budgetary initiative because, under Article III, section 52 of the Maryland Constitution, the General Assembly is prohibited from amending the budget to increase any items except those relating to the legislative branch or the judiciary. With certain exceptions, the Assembly may strike out or reduce other items. In general, the Legislature may reduce the governor's budget, but may not increase it. However, the governor

is limited in his constitutional powers (1) to establish and change the organizational structure of the executive and administrative departments, and (2) to select and, if necessary, remove heads of administrative departments. The present Constitution creates the Board of Public Works and other executive offices such as the secretary of state and adjutant general, while vesting the power to establish and modify offices and agencies not created by the Constitution in the General Assembly. Despite these constitutional legislative limitations on the governor's power, the Maryland Chief Executive still possesses great patronage and political authority, and in a largely one-party state (Democratic) is the most powerful figure both in his party and within the legislature. However, in Part Three it will be shown that Maryland Governors J. Millard Tawes (1958-1966) and Spiro T. Agnew (1966-1968) have generally supported programs to modernize the General Assembly.

C. THE LEGISLATIVE PROCESS IN MARYLAND

This branch of Maryland government has exercised the legislative powers of the State continuously since it first met in 1635, less than a year following settlement of the Queen Mary's province by Charles Calvert, the first Lord Baltimore, on March 25, 1634. The first session of the General Assembly was a town meeting which all freemen attended. At the second meeting, held in 1638, a number of citizens were represented "by proxy"--the earliest form of representation in the State. In 1650, the Assembly meeting split into

two separate but simultaneous sessions, one consisting of the titled and well-born and the other from the farmer and merchant classes. Thus, the bicameral system--a Senate and a House--came early into existence in the Maryland legislative process.

Among the first rules of procedure adopted by the new Assembly was one to require that:

"every one that is to speake to every matter, shall stand up, and be uncovered and direct his speech to the Lieutent grall as President of the Assembly. And if two or more stand up to together to speake, the Lieutent grall shall appoint who shall speake."

Another said that:

"no man shall stand up to speake to any matter untill the partie that spake last before, have sate downe nor shall any one speake above once to any bill or matter at one reading nor shall refute the speech of any other with any uncivil or contentious termes, nor shall name him but by some circumlocution."

And, finally, another rule established the length of daily sessions:

"the house shall sitt every day at eight of the clock in the morning, and two of the clock in the afternoone."³

Over three hundred years have passed since those early rules were written. The contemporary legislative process in Maryland has become more complicated and is designed to meet a more complex society than that in 1635, which was rural, sparse in numbers of people, and politically active only to the extent of opposing the authoritarian

³These basic facts of the earliest history of the Maryland General Assembly were obtained from the files of the Legislative Reference Service in the State House, Annapolis, Maryland, and from an interview with Dr. Carl Everstine, Reference Service Director and an authority on early legislative history in Maryland, August 28, 1968.

control of the Calvert line. Because the author will analyze the Maryland General Assembly--its administration, procedures and politics--in the context of mid-20th century economic and social demands, it is appropriate to outline the constitutional and procedural operations of this branch of government at the time "the politics of reform" began to work its will from 1966 to 1968.

D. TODAY'S GENERAL ASSEMBLY

The Legislative Department of Maryland is established by Article III of the present Constitution of Maryland.⁴ This article creates a Senate and a House of Delegates, the bicameral General Assembly of Maryland. Its provisions apportioning membership have been declared invalid by the Supreme Court of the United States. To fill this void, the General Assembly has enacted appropriate legislation fixing the Senate and House membership at 43 and 142, respectively. Both houses are apportioned on a population basis with districts of varying geographical sizes (Article 40, section 42 et seq.).

Senators and delegates are elected for four-year terms at the same general elections at which the governor and other State officials are elected. Maryland elections for State officials are

⁴The present Constitution of Maryland was adopted in 1867 at a September 18, 1967 statewide referendum by a vote of 47,152 to 23,036. The essential philosophy of this document was limitation of the powers of government and a prescribing of authorized and prohibited functions for the executive and legislative branches. For a history of the Maryland present Constitution, see Report of the Constitutional Convention Commission, pp. 59-64.

held in non-presidential election years, primarily to avoid involvement with Federal issues.

The General Assembly meets on the third Wednesday of January in each year for a period of 70 calendar days. The legislative leadership is determined in caucus, and the first order of business is the election of presiding officers of both houses. The presiding officers appoint the chairmen and members of all standing and select committees. The presiding officers do not serve on committees, but they vote on all bills, perform legislative administrative functions, and exercise persuasive influence with the executive and the legislative membership. The absence of a seniority system adds to the influence a majority governor can exercise in the organization of the legislature. After both houses have been organized, the General Assembly is ready for the introduction of legislative proposals.

The course of the passage of a bill through the General Assembly is as follows:

1) Development of an idea. This may come from any source--citizen, legislator, governor, or study committee.

2) Drafting of legislation. This service is usually provided by the department of legislative reference, but the attorney general frequently assists the executive department.

3) Introduction. Filing of a bill with the clerk of the House or the secretary of the Senate, known in each case as "dropping a bill in the hopper," initiates the life of a legislative proposal. Given a number and prepared for first reading, a bill requires one

or more sponsors. As a matter of courtesy and custom, the speaker and the president of the Senate introduce administrative and legislative council bills.

4) First reading. The reading clerk reads the title, and the presiding officer assigns the bill to the appropriate committee. During the last 28 days, no bill may be accepted for first reading in either house without the consent of two-thirds of the membership (Article III, section 27).

5) Committee action. The presiding officers assign bills of statewide import to standing committees and local legislation to select committees. This stage of a bill's passage is crucial. Unfavorable committee action usually means legislative death. However, chairmen of committees have not had the relatively strong powers as their counterparts in Congress. This condition may be altered in the future by the committee reorganization proposals adopted by the legislature and analyzed subsequently in this dissertation. Bills may be petitioned to the floor from standing committees by three senators and nineteen delegates.

6) Second reading and floor consideration. The bill is reported to the appropriate house floor by the committee (favorably, unfavorably, or without recommendation, and with or without committee amendment). Frequently test votes are taken at this stage of a bill's progress. Open to amendment from the floor, the ultimate form of the bill must be determined on second reading. The house may reverse committee action, but this is unusual.

7) Third reading. The bill must be printed for the house members' reading with all amendments written in the final version. No amendments may be presented in the house of origin, and the bill must be passed by a majority of the elected membership.

8) Second chamber. The procedure follows a pattern identical with the house of origin. If amended in the second house, however, the final passage may occur without reprinting.

9) Consideration in house of origin of bills amended in second chamber. The vote is taken here on a motion to concur or reject. If concurrence is voted, no reprinting of the bill is necessary for final action. If rejection is voted, several courses of action are possible: a) Request to other chamber for withdrawal of amendment. b) Upon refusal of withdrawal of amendment, either house may request a conference committee to adjust the differences between the two chambers.

10) Conference committee. A report of a conference committee must be adopted affirmatively or rejected without amendment. If adopted, the bill can be considered for final passage without a reprinting of the bill with amendments included. If rejected, the bill is dead. For the bill to be passed, both houses must pass it as amended by conference committee report by a favorable vote of the majority of the membership.

11) Presentation to governor. If a bill is presented to the governor prior to the last six days of a session, he must sign or veto it or it will become law. If presented to him during the last

six days of a session, he must give it his approval to make it a lawful enactment (Article 2, section 17).

12) Legislative power to override veto. If a bill is vetoed during a regular session, the veto message is considered immediately by the Assembly. If a veto is applied to a bill presented during or after the last six days of a session, the veto message must be considered immediately after the next regular or special session of the Legislature. A three-fifths vote of the elected membership of both houses is necessary to override the governor's action (Article 2, section 17).

13) Legislation the governor may not veto: a) The Budget Bill presented by him to the General Assembly. b) Constitutional amendments.

As noted in this chapter's analysis of the executive branch, the governor is charged with the duty of presenting a balanced budget to the General Assembly with supporting data and recommendations for reduction or increase in revenue. The Legislature with certain limitations has the power to reduce the governor's budget proposals, but it cannot increase them. The two houses have one means by which they may increase State appropriations beyond the governor's recommendations--the Supplementary Appropriations Bill. If the latter instrument is used, it must be financed by a tax to meet the expenditure. However, an extraordinary session of the General Assembly may make emergency appropriations without the balanced budget restrictions imposed in regular session.

The Budget Bill and Supplementary Appropriations Bill are governed by the Maryland Constitution, Article 3, section 52, and by those constitutional provisions that are compatible with its mandates. State debt is incurred under strict limitations set forth in Article 3, section 34. These provisions have the virtue of producing orderly State finances and of making a balanced budget a constitutional requirement.

Several supportive agencies exist to serve the General Assembly, the principal ones among them being the Department of Legislative Reference, which provides research, library, and bill-drafting services; the State Fiscal Research Bureau, which services the finance committees and is the principal agency that analyzes the governor's budget for the Legislature; the offices of the clerk of the House and Senate; bill analysts for standing committees; the Legislative Council, composed of legislative leaders and committee chairmen, which serves as the between-session policy arm for the Assembly; and the Attorney General's Office, which serves as the legal adviser for the Legislature (Maryland Constitution, Article 5, section 3).

E. THE CAST OF CHARACTERS IN MARYLAND'S POLITICS OF LEGISLATIVE REFORM, 1966-68

The leading political personality in the story of Maryland legislative reform is Marvin Mandel (D., Baltimore City, 5th District). Before his selection as governor by the General Assembly to fill the

unexpired term of Spiro T. Agnew, elected Vice President of the United States on November 5, 1968,⁵ Mandel served as speaker of the Maryland House of Delegates from 1963 to January 9, 1969. His designation as the most important figure in the story of Maryland's legislative modernization is based on the great power that adheres to his office, as outlined in Chapter VII in the analysis of Speaker Mandel's testimony before the Citizens Commission. But his leading role is also attributed to an intriguing and skillful political personality on the Maryland legislative scene since Marvin Mandel first entered the House of Delegates in 1952. A product of Jack Pollock's 5th District, Baltimore City organization, Mandel renounced that affiliation after his career was sufficiently stabilized. He possesses leadership characteristics similar to those of the late Speaker of the U.S. House of Representatives, Sam Rayburn. Not a flamboyant legislator, he almost invariably made decisions from a position of strength or, in the working politician's words, "when he has the votes." As the most powerful single member of the General Assembly, Marvin Mandel would be the key to unlock the door of legislative reform.

Other legislators whose political activity has been critical to the success of legislative modernization programs include Senate President William James (D., Harford County), a scholarly legislator

⁵Maryland, Constitution, Art. 2, sec. 6, 7. On January 9, 1969, Marvin Mandel was selected Governor of Maryland by the General Assembly, and on January 20, 1969, Spiro T. Agnew was inaugurated Vice President of the United States. In this dissertation, they are identified as Governor Agnew and Speaker Mandel--the offices they held during the 1966-1968 period under analysis.

who sometimes sought to modify proposals that might reduce the importance of the Legislative Council or Senate. House Judiciary Chairman Thomas Hunter Lowe (D., Talbot County), homespun Eastern Shoreman who actually grew up in Baltimore and possessed a complete knowledge of the House of Delegates, particularly its committee system and power structure. Regardless of philosophical differences with the more liberal delegates, Lowe was sufficiently respected by the Assembly to be elected as Mandel's successor after the latter's accession to the governorship.

Two other senators were destined to play important roles in improving the Assembly's oversight of the governor's budget and in implementing proposals in administrative-research staffing. Blair Lee, III (D., Montgomery County), patrician Senator and son of Col. E. Brooke Lee (this chapter, supra) prepared memoranda that supported recommendations for a Joint Budget Committee to analyze the budget on a year-round basis. His Senate prestige extended to the House of Delegates, as evidenced in his January 1969 appointment as Secretary of State in the Marvin Mandel administration. Dr. Paul Cooper, Director of Fiscal Research Bureau, was Senator Lee's publicly silent but privately influential partner in securing legislative oversight reforms. Senator Roy Staten (D., Baltimore County), whose political career was rooted in the organization politics of Baltimore County, donned the "reformer's hat" in a reapportioned State Senate and acted as the principal catalyst for increased staff services and legislative salaries.

As important as any legislator in the process of legislative modernization was the restraining, somewhat conservative influence of Dr. Carl Everstine, director of the Legislative Reference Service. His long service in the Assembly's principal supportive agency gave him administrative power that was pervasive in the manner that Legislative Council decisions were executed.

Two Maryland governors are part of the politics of legislative reform from 1966 to 1968. J. Millard Tawes, a product of Democratic organization politics and the leader of a relatively lackluster State administration, strongly supported both constitutional and legislative reorganization through his appointment of a Constitutional Convention Commission on June 16, 1965. Paradoxically, it was Tawes who had been the symbol of state government complacency that generated the reform movements analyzed in Chapters IV and V. In sharp contrast Spiro T. Agnew, Baltimore County executive elected governor on an essentially reform program of efficient administration, symbolized a forward turn for state government in Maryland at the time he took office in January 1967. Having been the beneficiary of a bitterly divided Democratic primary, Agnew injected a bipartisan, cooperative spirit into the 1967 legislative session. And, in the context of the 1967 Constitutional Convention, the Republican governor also supported legislative modernization. In retrospect, the Tawes and Agnew records in support of Assembly reorganization were equally strong, with substantive groundwork being laid by Governor Tawes, who had been sharply attacked within

his own party for failure to make sufficient governmental progress on the state level. Perhaps Agnew's greatest contribution to reform the General Assembly was to lend bipartisan support to the Citizens Commission on the General Assembly which began as a Democratic party study group. (See Chapter VII.)

Two other principals emerge in the politics of legislative reform--H. Vernon Eney, president of the Maryland Constitutional Convention, and Francis X. Gallagher, chairman of that Convention's Legislative Article Committee. Both Baltimore attorneys and both reformers who preferred to work in the context of applying pressures to the Political Establishment, Eney and Gallagher at least partially failed to enlist the support of legislators in constitutional changes for the General Assembly. While other governmental and political figures dot the landscape in the forthcoming chapters, the story of legislative reform from 1966 to 1968 was most sharply affected by these men. With this backdrop of Maryland--her politics, executive and legislative branches, and political cast of characters--reapportionment and reorganization of the General Assembly begins. As will be seen in Chapters IV and V, population changes, public opinion, and agitation within the Legislature itself served as catalysts for that reapportionment and reorganization.

CHAPTER IV

SHIFTS IN POPULATION. THE PUBLIC BEGINS TO
SUPPORT POLITICAL REFORM

A. INTRODUCTION

An acceptable climate of public opinion is necessary for the progress of any program to modernize or "reform" the institutions and operations of government. In 1967, former North Carolina Governor Terry Sanford emphasized that "the extent of change and improvement in programs to modernize state governments today will be determined by how urgent people believe the cause to be."¹ Sanford's condition of public acceptance as a prerequisite for state government modernization does not preclude stimulation of support by organizations promoting change, but implies that public opinion must also be supportive of specific programs for altering the institutional structure and the operations of government.

Following 15 years of unprecedented growth in population and economy after World War II, the State of Maryland underwent specific developments that brought several programs of government reform

¹Interview with Governor Terry Sanford at Board of Trustees meeting of the Citizens Conference on State Legislatures, November 5, 1967. For general analysis of the changes occurring in state government, see Terry Sanford, Storm over the States (New York: McGraw-Hill, 1967).

into being and a somewhat lesser number to successful completion. The first major program for political change of the 1960's in the Free State was reapportionment of the Maryland General Assembly which also focused attention on the Legislature as an institution and helped create a proper foundation for subsequent programs to modernize its internal operations and constitutional provisions.

Although operational and procedural modernization of the General Assembly has proceeded with measurable success, and comprehensive constitutional revision in Maryland has met with voter rejection,² the changing demographic patterns from 1950 to 1960 and the political developments from 1960 to 1966 created a favorable environment for both constitutional and operational reform in the State's representative branch of government. In Sanford's words, "the people, who for so long restrained the full use of the resources of state governments in dealing with the pressing problems of the entire country, have now begun to be more receptive to the imperatives for reform."³

B. DEMOGRAPHIC CHANGES

Since World War II, Maryland has sustained a rapid rate of population growth, encouraged by both increased birth rates and large

²The voters of Maryland, by a 367,101 to 284,033 vote on May 14, 1968, rejected a proposed new Constitution drafted by a representative convention which met from September 1967 to January 1968. Programs for internal reorganization, prepared by the Citizens Commission on the General Assembly and the Eagleton Institute, will be analyzed in subsequent chapters of this dissertation.

³Interview with Governor Sanford, op. cit.

migrations from other states. From 1950 to 1960 the total population of the State grew from 2,343,000 to 3,100,000--an average yearly increase of 3.2 per cent as contrasted with the national average of 1.86 per cent. The migration from other states accounted for over 323,000 people, or 43 per cent of the total increase in the decade of the 1950's.⁴ According to Department of Economic Development figures, Maryland's population by 1965 was 3,521,000--a total increase of 13.2 per cent from 1950 to 1965, making Maryland the fifth fastest growing state in the nation.⁵

In addition to Maryland's total population growth, shifts of population within the State have occurred. It is these shifts, combined with the total increase, that have created new geographic centers of political power in the suburban counties surrounding Baltimore and Washington, D.C. From 1950 to 1960 the population of Baltimore City declined 10,700, from 949,700 to 939,000. In sharp contrast, the population of the four counties surrounding Baltimore (Baltimore, Anne Arundel, Carroll and Howard) increased by 72.4 per cent, or 341,308 people, during that same decade. A similar population expansion occurred in the Washington metropolitan area where the number of people in Montgomery and Prince Georges

⁴Maryland State Department of Planning, The Population of Maryland (Publication #140, State Department Planning Series, 1967), p. 33 and chart #174.

⁵Maryland Department of Economic Development, Maryland Statistical Abstract, October, 1967, p. 3, and survey chart, p. 4.

counties increased by 94.7 per cent, or 339,740 persons, from 1950 to 1960.⁶

Perhaps the most politically significant information from the demographic data is that from 1950 to 1960, 311,285 out of a total of 320,475 new Maryland residents settled in the six counties that comprise the suburban areas surrounding Baltimore and Washington. In addition to this numerical increase of suburban residents and decrease (10,700) of Baltimore City residents, that city's racial composition began to change during the same decade by an exodus of 175,520 white citizens to surrounding areas. The departing residents comprised 30 per cent of the city's total white population. During the same ten years Baltimore's Negro population increased from 23.8 to 34.9 per cent of its total 1960 population.⁷ The 1968 population breakdown of Baltimore's population was 523,700 white and 385,200 nonwhite, with Negroes constituting 42 per cent of the city's population.⁸

Other demographic data reveal that the Eastern Shore and Western Maryland counties have maintained relatively static population levels, with Garrett and Alleghany counties, a region affected by the declining coal industry, actually having decreased in numbers of residents.

⁶Margaret Hennessey, Maryland State Department of Health Memorandum: Population Changes in Maryland (Health Education Services, May 17, 1961).

⁷Division of Statistical Research and Records, Maryland State Department of Health Memorandum: Estimated Net Migration of the Population of Maryland, 1950-1960 (Published October 10, 1961).

⁸Maryland Commission on Interracial Problems and Relations, October 1968 files.

Maryland's demography during the 1950's is the story of suburban growth and urban change created by (1) the influx of white residents into once-rural counties surrounding Baltimore and Washington, and (2) the increase of Negro residents in those two cities. Profound economic and social changes have arisen from these population shifts, cresting some of the great political struggles in the Free State's history.

C. PUBLIC ATTITUDES CONCERNING STATE GOVERNMENT
AND THE LEGISLATURE IN MARYLAND

Maryland's demographic shift from a rural to an urban and suburban state provided the backdrop for economic and social changes which, in turn, stimulated programs for government modernization and reform. Included in those changes was an altered public attitude toward state government in Maryland. This developing public opinion, without fixed ties to the past, incorporated a distrust of those officials managing state government with a desire for a change, a "new style" of public policy, in both the executive and the legislative branches.

In the executive branch, the primary cause of discontent was the organization-style or "machine" politics of the administration of Governor J. Millard Tawes, a relatively colorless Eastern Shore politician who rose from Somerset County court clerk to the governorship by incremental steps and sponsorship of the State Democratic party hierarchy. In the legislative branch, the failure of a mal-apportioned General Assembly to enact legislation regulating Maryland's savings and loan institutions created public dissatisfaction.

That failure was personalized in the public mind by a Federal district court's indictment of a Speaker of the Maryland House of Delegates for mail fraud as counsel for the heavily promoted, but financially insecure Security Savings and Loan Company. From 1960 to 1966, the public's impression of the Maryland Legislature was a "spittoon image" of rural legislators, dressed in blue jeans, wasting 70 days of taxpayers' money in Annapolis. The news media, particularly the Sun (Baltimore) encouraged this public image by attacks on the General Assembly's defeat of various tax and judicial reform bills and legislation regulating the slot machine industry in Southern Maryland.

A confidential survey of Maryland citizen attitudes, taken by Oliver Quayle and Associates in September 1963, revealed that Governor Tawes was in political trouble with the voters of Maryland, even among those in his own party. Responding to the question "Has Governor Tawes done a competent job in managing the State Government?" 52 per cent responded that a "poor" job had been done; 36 per cent a "fair" job; and only 12 per cent responded that either a "good" or "adequate" performance characterized the Maryland Chief Executive's record.⁹ By December 1965, unfavorable opinions prevailed among selected Democratic party voters on the Tawes'

⁹ Oliver Quayle and Associates, Confidential Survey of Political Attitudes in Maryland: September 1963 (Published, Bronsville, N. Y.). Permission was given the author to quote from this and other surveys for dissertation use only. In no way may the data from the survey be used for any published analysis.

gubernatorial performance. On the following three "state government reform" issues, 63 to 69 per cent of the respondents considered the governor's record "unfavorable":¹⁰

	<u>Favorable</u>	<u>Unfavorable</u>
Preventing graft and corruption . . .	31%	69%
Reapportioning the state legislature	34%	66%
Handling state taxes	37%	63%
<p>(This question did not relate to whether State taxes were too high to low, but rather the administration of effective tax programs. The respondents were informed that management and creation of new tax programs was the focus of this question.)</p>		

Mr. Quayle, former associate of political analyst Louis Harris and president of Oliver Quayle and Associates, identifies the beginnings of recent political reform in Maryland with the 1960 Kennedy presidential campaign in the State, followed by "the surprisingly high vote total of independent candidate and political unknown David Hume in the 1962 race for Governor."¹¹ Mr. Quayle's familiarity with political developments in Maryland is predicated upon a series

¹⁰Quayle and Associates, Confidential Survey of Political Attitudes in Maryland, December 1965, p. 32. Permission was not given to record, either in dissertation or published form, the exact number of respondents interviewed in the cited surveys. Permission was given to identify the number as between "900 and 1,200" registered Maryland voters."

¹¹Interview with Oliver Quayle, President of Oliver Quayle and Associates, Bronxville, New York, August 17, 1968.

of surveys of Maryland political attitudes conducted from 1960 through 1966. The surveys were authorized by contract between Quayle and the late President John F. Kennedy (1960 and 1962); Senator Daniel B. Brewster (1962, in his general election campaign for the U.S. Senate); Senator Joseph D. Tydings (1963 and 1964, in his Democratic nomination and general election campaign for the Senate); President Lyndon B. Johnson (1964, in his general election campaign for the Presidency); and Governor Spiro T. Agnew (1966, in his general election campaign for the governorship).

In analyzing the Maryland political situation during the 1962-1964 period, at which time he conducted one survey for independent gubernatorial candidate David Hume and six surveys for senatorial candidate Joseph D. Tydings, Oliver Quayle emphasized that "Marylanders were looking for a change in style as much as in substance. The voters were disgusted with 1) the Tawes record, 2) the lack of savings and loan regulation by, and corruption within the Legislature, and 3) the declining influence of Baltimore City in the affairs of Maryland, particularly the 'wide-open' atmosphere of crime and 'the Block' in Baltimore during the D'Alesandro and Goodman administrations."¹²

The political attitudes of Maryland voters were sufficiently negative regarding the performance of their State government that Quayle recommended to the then U.S. Attorney Tydings that he run

¹²Ibid.

as a "non-machine, new-face candidate who was opposing the status quo in State government as much as he was prepared to meet the challenge of the United States Senate. In fact, Tydings did not really commit himself on too many issues, but his style and approach was different--he simply offered change."¹³

It can be concluded from the 1963 and 1964 Quayle surveys that candidate Tydings was the beneficiary of the first stirring of reform that had begun in Maryland with the campaign of John F. Kennedy for the Presidency. According to Quayle, the Tawes administration, although only two years old, was sufficiently lackluster to encourage Kennedy to "inform the Governor that if he held Maryland Democrats to his favorite son candidacy, then a challenge from the Massachusetts Senator would be forthcoming."¹⁴ Quayle emphasized that the Kennedy entry into the Maryland primary was largely predicated upon the weak standing of the Governor among the State's voters.

That weak standing was underscored two years later in 1962 when David Hume, a relatively unknown Democrat and former administrative assistant to Governor Tawes, campaigned as an Independent for the governorship. His campaign was predicated upon discontent of the Maryland voter with the performance of his State's government:

"There must be hope for those who are weary of brutal power politics by which loyalty to the political crony supersedes loyalty to the

¹³Ibid.

¹⁴Ibid.

people of the State--politics in which appointments to high office are repayment of some political debt and not based on ability. When I look at State government in Maryland, I see that we have fallen into a system where the pledge and the political promise are worth little. It is all right to say things, but not to mean them."¹⁵

The Hume platform contained specific recommendations for the reform of certain political and business institutions in Maryland: the abolition of slot machines in southern Maryland; a "strict reapportionment plan for the General Assembly, based solely on population"; assistance to "economically sick" Baltimore through creation of a 1 per cent earnings tax; less dependence on the property tax and gradual blurring of the boundary lines separating city and its surrounding metropolitan area; and enactment of a statewide fair housing law.¹⁶

In the May 1962 primary, without benefit of a formal political organization or "campaign ticket," David Hume garnered 118,295 votes of a total 423,053 cast, in a three-man primary race between incumbent Governor Tawes (178,792) and perennial candidate George P. Mahoney (125,966). Hume carried the Washington "bedroom counties" of Prince George's and Montgomery. He was defeated by Tawes, but ran ahead of Mahoney in seven counties.¹⁷

¹⁵David Hume, as quoted in The Evening Sun (Baltimore), May 5, 1962.

¹⁶The platform of David Hume, as reported in The Evening Sun (Baltimore), April 16, 1962.

¹⁷Maryland Manual (1962-1963), p. 233.

Two years after the Hume campaign had given birth to a full-fledged reform movement in Maryland, a self-appointed heir to anti-machine politics emerged, not as a candidate for a State government office, but for the United States Senate. In what Oliver Quayle terms a "clean house" campaign, Joseph D. Tydings, U.S. Attorney for the District of Maryland, opened his primary contest against Louis L. Goldstein, State Comptroller in the Tawes Administration, by emphasizing that "my candidacy gives the people of Maryland a clear choice between ten more years of the same old ways with the same old guard, or a new era with new ideas and a new voice responsive to the needs of the people in our State."¹⁸ A combination of the reform issue, the candidate's political attractiveness, and a well-financed campaign gave Tydings the primary victory over Comptroller Goldstein by a 241,037 to 130,441 vote margin. He subsequently defeated incumbent Senator J. Glenn Beall by 678,649 to 402,393 votes in the November general election.¹⁹

Part of the political attractiveness of candidate Tydings was his record of prosecution of several savings and loan institutions in Maryland, under violation of Federal mail fraud statutes. He combined that record, which included the indictment and conviction

¹⁸ Joseph D. Tydings as quoted in The Sun (Baltimore), January 14, 1964.

¹⁹ Maryland Manual, 1967-68, p. 541.

of House Speaker A. Gordon Boone and the indictment of Maryland Democratic Congressman Thomas Johnson, with his own performance as a "reformer" in the Maryland General Assembly. Tydings notes that "my activity in urging savings and loan regulation by the Legislature and the unresponsiveness of the House of Delegates to pressing problems created a strong base on which to build a viable Senate candidacy. My attack was predicated as much on the ineptness of the State government, particularly the governor and the Assembly, as on what I would do if elected to the United States Senate."²⁰

Although the reform issues were somewhat diffused in 1966 because of a four-man primary race for the Democratic gubernatorial nomination, the voter distrust of the Tawes administration contributed to the defeat of the outgoing governor's heir-apparent, Attorney General Thomas Finan, Jr. In the September Democratic primary, Finan was defeated by the combined vote of civic leader Clarence Miles, running as a moderate, and labor-endorsed Congressman Carlton Sickles, running as a liberal. With both Miles and Sickles attacking Finan, the reform vote split, resulting in the nomination of perennial candidate George P. Mahoney. Mahoney's seventh try for statewide office was marked by a racially tinged slogan, "Your Home is Your Castle," which he could sing at campaign rallies to the tune of "The Bells of St. Mary's."

²⁰Interview with Senator Joseph D. Tydings, July 10, 1968.

The banner of reform was carried into the 1966 general election by a Republican, Baltimore County Executive Spiro T. Agnew. Agnew based his campaign on State government modernization, a corresponding attack on the outgoing Democratic Administration, and in the last two weeks before election, a vigorous public questioning of Mahoney's competency to assume the governorship. Included in the standard Agnew speech were strong endorsements of the completed management reorganization study by the Governor's Commission on Modernizing the Executive Branch and the work in progress by the Citizens Commission on the General Assembly.²¹

In the 1966 Democratic primary election, the prevailing public attitude in Maryland was still supportive of State government reform, identifiable particularly through the combined vote totals of Mr. Miles and Congressman Sickles (188,811 votes) over Attorney General Finan, the symbol of an allegedly complacent Tawes Administration. This total is particularly significant because each of the two candidates who based his campaigning on reform of State government had serious political defects. Although prominent in numerous civic causes and a leader in government commission work, Miles was 70 years old. Despite the fact that he had received the blessing of Senator Tydings and the endorsement of the Maryland AFL-CIO, Sickles

²¹No detailed study of the 1966 Maryland Democratic primary has yet been completed, but a useful analysis of the general election campaign has been written by Robert O'Connor in an unpublished undergraduate thesis, The Johns Hopkins University Political Science Department, May 1967.

simply did not project as a candidate and was unable to find an issue with which the voters could identify. Clearly, Mahoney was a political aberration whose nomination would have been impossible were it not for the presence of two relatively ineffective reform candidates in a four-way race.²² Agnew proved this by defeating Mahoney 455,318 to 373,543 votes.

From the shifts in population to shifts in public attitudes, it was clear that by 1966 reform was a salient public concern and an equally viable political issue. But population and opinion changes were not of themselves sufficient to create a favorable environment for comprehensive reform of the Maryland General Assembly. Reapportionment proposals, as well as executive initiatives and specific demands by legislators themselves brought the background setting sharply into focus.

²²This analysis of the 1966 Democratic primary and subsequent general election is supported by an interview with Oliver Quayle on August 17, 1968. Mr. Quayle's observations are based upon a series of confidential opinion surveys taken for Congressman Sickles (primary) and County Executive Agnew (general election). The use of data from these surveys had not been authorized by individuals who financed them.

CHAPTER V

REAPPORTIONMENT OF THE STATE LEGISLATURE AND GROWING PUBLIC
DISSATISFACTION WITH THE ASSEMBLY'S PERFORMANCE

A. REAPPORTIONMENT: A PARTIAL SOLUTION

Prior to the 1966-1968 programs for constitutional and internal reorganization of the Maryland General Assembly, the most significant change affecting that branch of the State government was reapportionment of its membership in order to reflect the changed demographic conditions revealed by the 1960 census. Until the first corrective steps were taken for the House of Delegates in 1962, Maryland was the fourth most malapportioned state in the nation, with its counties of Baltimore, Montgomery, and Prince George's among the ten most underrepresented in any American state legislature.¹ As an example of the disparity between population and representation in the 1962 legislative session, Somerset County's three-member delegation had a ratio of one representative to every 6,500 people, while each of Baltimore County's six delegates represented approximately 82,000. In the Senate the membership was

¹J. Anthony Luckas, "Barnyard Government in Maryland," Reporter (April 12, 1962), pp. 31-34. See also Robert G. Dixon, Jr., Democratic Representation: Reapportionment in Law and Politics (Oxford University Press, 1968), pp. 217-229.

equally unrepresentative--the Eastern Shore counties of Kent and St. Mary's sent two senators to Annapolis who each represented approximately 15,200 people. However, Prince George's and Montgomery's two senators spoke for 335,000 and 291,000 constituents, respectively. Converted to percentages, 67.3 per cent of Baltimore County's population was underrepresented in the Legislature, with 58.9 per cent of Prince George's and 53.3 per cent of Montgomery's citizens deprived of adequate representation, based on population. All other counties in the State (except Anne Arundel, which was underrepresented by 25.9 per cent) were overrepresented in the delegate-constituent ratio from 25 to 276 per cent.

New legal and political pressures for change forced Governor J. Millard Tawes to call a special session of the General Assembly on May 25, 1962, just two months after the famous Tennessee case Baker v. Carr had been decided by the United States Supreme Court.² That decision held that suits alleging a malapportionment of state legislatures are "justiciable" controversies that can be brought within Federal jurisdiction. But Tennessee had not been the only state under criticism for a malapportionment of its legislature. Maryland reformers brought suit in 1960 in the Anne Arundel County Circuit Court through the committee for Fair Representation under the chairmanship of Dr. Royce Hanson, then a political science professor at American University, living in Montgomery County.

²369 U.S. 186 (1962).

(Dr. Hanson is currently President of the Washington Center for Metropolitan Studies.) The suit was dismissed on the circuit court level; plaintiffs appealed to the Maryland Court of Appeals, and in early 1962 the State's high court held that the constitutionality of the apportionment of the Maryland Legislature was justiciable and remanded the case to the circuit court.³ On remand, the Circuit Court held that the existing apportionment of the House of Delegates was unconstitutional and that apportionment could be corrected either by state or constitutional amendment.

Malapportionment in the General Assembly, the specific complaint of Dr. Hanson's Fair Representation Committee, is explained in the breakdown of population and legislative representation for Maryland's subdivisions (see the table on the following page). The information in the table applies prior to the 1962 session called to reapportion the House of Delegates.

The 1962 statute, drafted in special session of the Legislature, provides for a House of 123 delegates with a minimum of two delegates from each county; within these requirements the 123 are apportioned according to population. The statute further provides that the formula for distributing delegates according to population shall, until December 21, 1965, only be applied to the extent that it increases representation of any county or district of Baltimore City.

³Maryland Committee for Fair Representation v. Tawes, 228 Md. 412 (1962).

Population and Legislative Representation, Maryland's Subdivisions

Subdivision	Seats in--				Population ^b		
	House		Senate ^a	General Assembly		No.	Per cent
	No.	Per cent		No.	Per cent		
Baltimore City	36	29.28	6	42	27.63	984,000	33.06
First District	6	4.88	1	7	4.61	102,138	3.43
Second District	6	4.88	1	7	4.61	81,475	2.74
Third District	6	4.88	1	7	4.61	300,907	10.11
Fourth District	6	4.88	1	7	4.61	117,391	3.94
Fifth District	6	4.88	1	7	4.61	260,760	8.76
Sixth District	6	4.88	1	7	4.61	120,245	4.04
Counties	87	70.72	23	110	72.37	1,992,800	66.94
Allegany	6	4.88	1	7	4.61	83,000	2.79
Anne Arundel	6	4.88	1	7	4.61	188,000	6.32
Baltimore	6	4.88	1	7	4.61	444,000	14.92
Calvert	2	1.63	1	3	1.97	15,000	0.50
Caroline	2	1.63	1	3	1.97	18,800	0.63
Carroll	4	3.25	1	5	3.29	54,500	1.83
Cecil	3	2.44	1	4	2.63	48,000	1.61
Charles	2	1.63	1	3	1.97	30,000	1.01
Dorchester	4	3.25	1	5	3.29	28,800	0.97
Frederick	6	4.88	1	7	4.61	69,500	2.33
Garrett	3	2.44	1	4	2.63	19,000	0.64
Harford	4	3.25	1	5	3.29	67,000	2.25
Howard	2	1.63	1	3	1.97	30,500	1.02
Kent	2	1.63	1	3	1.97	15,500	0.52
Montgomery	6	4.88	1	7	4.61	291,000	9.78
Prince George's	6	4.88	1	7	4.61	335,000	11.25
Queen Anne's	2	1.63	1	3	1.97	15,200	0.51
St. Mary's	2	1.63	1	3	1.97	39,000	1.31
Somerset	3	2.44	1	4	2.63	19,500	0.66
Talbot	3	2.44	1	4	2.63	20,500	0.69
Washington	6	4.88	1	7	4.61	87,500	2.94
Wicomico	4	3.25	1	5	3.29	48,500	1.63
Worcester	3	2.44	1	4	2.63	25,000	0.84
Total	123	----	29	152	----	2,976,800	----

^aEach Senate seat represents 3.45 per cent of that chamber; Baltimore City holds 20.70 per cent of the seats in the upper house.

^bFor the counties and Baltimore City the population figures are estimates of the State Department of Health and the City Health Department. Statistics for the legislative districts within the City are based on registration figures as of December 31, 1957; the proportions represented with the latter have been applied to the City's 1958 population.

Then beginning on December 31, and thereafter within one year after the publication of each census, the governor shall apply the formula for reapportionment and declare the number of delegates that shall represent each county and district of Baltimore City in the House.⁴

As a result of partial application of the 1962 formula, the membership of the Maryland House of Delegates was increased from 123 to 142. Nineteen delegates were added to the State's four suburban counties and two of Baltimore City's legislative districts-- three to the City, one to Anne Arundel, four each to Montgomery and Prince George's, and seven to Baltimore County.⁵

By 1966, after the Supreme Court's major reapportionment decision in Reynolds v. Simms,⁶ which declared that both houses of a state legislature had to be apportioned on the basis of population, the Maryland Legislature again responded in special session by adopting "the James Plan" in October 1965. This plan increased the Senate membership from 29 to 43.⁷ The plan simply incorporated less populated counties into larger Senate districts while, at the same time, heavily populated counties were divided into two or more districts. In addition to accommodating the Baker and Reynolds decisions, the James Plan also had a parochial purpose--protection

⁴Annotated Code of Maryland, Art. 40, sec. 42 (1962).

⁵For general analysis of malapportionment of the Maryland General Assembly prior to 1962, see Franklin L. Burdette, "Maryland Reapportionment Efforts Rebuffed," National Civic Review (January, 1960), pp. 24-35.

⁶377 U.S. 533 (1964).

⁷The James Plan was named for its sponsor, Senate President William F. James (D. Harford County).

of the seats held by incumbent senators in 1966. Senate President James had indicated that "although it is perhaps more desirable to have a smaller body for purposes of efficiency it is also unreasonable to expect members of a legislative body to reapportion themselves out of a job. Part of this plan's purpose was protection of those senators who were being asked to adjust the political situation within their own legislative body. Obviously, a wholesale elimination of jobs would have made passage of the plan exceedingly difficult."⁸ Although never fully articulated by the drafters of the James Plan, Senate reapportionment created a significant alteration in the political power structure of several large Maryland counties. That adjustment in turn created reservoirs of support for legislative modernization which, prior to 1966, simply did not exist in a small, self-contained upper house. Heretofore, the Senate had been able to exercise real power without professionalization of its administration and procedures. A case in point was the readjustment of political power in Baltimore County, for many years a bastion of Democratic party machine politics, characterized as much by its hierarchical control of party officeholders and workers as for its conservatism. Prior to enactment of the James Plan which created seven senatorial districts in Baltimore County, one State senator controlled the patronage and political decisions for that county in the upper house. Senator James Pine, a small-town lawyer and real estate speculator, who had the lone seat prior

⁸ Interview with Senator William F. James, President of the Maryland Senate, November 10, 1966.

to the 1966 election, revealed to the author his reservations about reapportionment and professionalization of the Assembly:

Although I know you young reformers want to make the Legislature more efficient and modern, I can't really be for that so long as I am the only senator from Baltimore County. You know county politics well enough to realize that I'm consulted on every decision simply because I have all the power from Baltimore County in the Senate. I have mixed emotions about reapportionment. Frankly, it will give my county more of a numerical voice down there--but it isn't going to help me. Your ideas for reform and efficiency will probably be more welcome and, I guess, more needed if we have more members in the Senate.⁹

It is significant to note that some of the strongest support for the 1967-1968 legislative modernization programs came from a State Senator elected in 1966 under the James Plan. A former delegate and chairman of the House Ways and Means Committee, Roy Staten was elected from the industrial "lower end" of Baltimore County dominated by the Glenn L. Martin and Bethlehem Steel industrial complex. Humorously identified as "the Dirksen of Dundalk" because of a deep and powerful voice, Staten represented the newly created seventh senatorial district, an area known for its regularity in voting for the Democratic organization ticket and its loyalty to prior political leaders--Streett Baldwin, Christian Kahl, "Mike" Birmingham, and Senator James Pine--regular Democrats who had dominated County politics since World War II. Although a product

⁹ Interview with Senator James Pine (D. Baltimore County), February 17, 1966, during the 1966 session of the General Assembly. Senator Pine did vote for the James Plan. The eight senators (Dean, Graham, Hall, Hepbron, North, Parran, Phoebus, and Sanford) who voted against the plan all represented thinly-populated Eastern Shore and Southern Maryland counties that would lose numerical voice in the Senate, once a population-based formula was applied.

of the organization and a "deliverable" blue collar district, Staten recognized that the legislative system had been changed by reapportionment and that he was a product of that change. He was to be one of the first senators to identify himself solidly and publicly on record for legislative reorganization in the 1967 session of the Legislature, the first session that operated under reapportionment of both houses.

Senator Staten correlated his "willingness to be out front on this reform issue" with reapportionment: "A man would have to be stupid not to recognize that the Legislature was going to change because of the new members and the new power given areas like the one I represent. It is imperative that the power of the Legislature be upgraded to match that of the governor, regardless of whether he is a Democrat or Republican. We have to take advantage of reapportionment."¹⁰ Staten also recognized political realities when he observed that "we may now have seven senators from Baltimore County-- a 4-3 margin often separates the two reform Democrats and two Republicans from the three of us who are more traditional in our attitudes. It pays for me to find the issues where I can put on a white hat and not always be the organization man."¹¹

¹⁰ Senator Roy Staten, in a meeting on April 14, 1967 with the author and Mr. Larry Margolis, former administrative assistant to Speaker Jesse Unruh of the California Assembly, and currently Executive Director of the Citizens Conference on State Legislatures. Other representatives of the Citizens Conference and members of the Citizens Commission on the General Assembly were also present.

¹¹ Senator Staten, in a private conversation with the author at the same meeting described in footnote 10 above.

Clearly, modification of a single senator's attitude does not fully explain the changes that developed in the General Assembly as a newly apportioned branch of government. But his change of heart is symptomatic of changing legislative attitudes.

With reapportionment a fact of life after January 1967, what were other political consequences of this "new representation"? As already analyzed in this chapter by the increase in urban and suburban representatives, the first effect was obviously demographic. The new Assembly, as contrasted with the 1962-1966 body, more accurately reflected the State's large metropolitan population. The second political result, an outgrowth of the first, was a more favorable attitude toward legislation that would initiate State action in behalf of the newly enfranchised suburban counties and Baltimore City, although financial assistance for Maryland's urban center would not prove to be as easy as anticipated under reapportionment. A third consequence, which will be examined in Chapters VI-XIII, was a more receptive point of view toward modernization of the State government, particularly its legislative branch, in order that its constitutional, administrative and procedural operations could more effectively react to the complexities of Maryland's increasingly urban environment. As noted in Chapter II, the legislature--although often viewed as a reactive instead of an innovative body--does serve as a means of legitimizing the activities of government. As contrasted with the single gubernatorial executive or the appointed judiciary, the Legislature is a more logical forum

for public acceptance of governmental reorganization--primarily because of the concept of local representation by which the people speak with more direct access to government, through elected senators and delegates, than in the other two branches.

Concerning the second consequence of reapportionment, receptivity toward more "progressive" legislation, the state of mind of the rural, as opposed to the urban and suburban, representative must be examined. It has been said that the principal reason for the inability of a malapportioned legislature to respond to urban problems is "a distrust of the 'professional,' one of the basic concepts of rural and small town moralism. The rural legislator frequently views the trained specialist as a fuzzy-minded idealist, an over-educated fool rather than a pragmatist!"¹² Prior to reapportionment, many state legislators came from small towns and rural areas where they did not always appreciate the pressing problems of urban growth and suburban sprawl. More often than not they opposed change, or at least reacted cautiously to innovative legislation to help solve the economic and social problems that beset many states in the late 1950's.¹³

¹²Charles Press and Charles R. Adrian, "Why Our State Governments Are Sick," Antioch Review (Summer, 1963), pp. 149-165, quote at 157-158.

¹³For an analysis of the ecological origins of American state legislators, their family background, and political socialization, see Jewell and Patterson, The Legislative Process in the United States, op. cit., pp. 101-106. Also, for an analysis of the rural ethos that has permeated the thinking of many state legislators, see Robert G. Dixon, Jr., Democratic Representation: Reapportionment in Law and Politics (Oxford University Press, New York, London, Toronto, 1968), pp. 43-45.

This somewhat normative assertion finds support in the actions and attitudes of the Maryland General Assembly membership prior to reapportionment of its two houses in 1966. The most apparent example was the defeat of the Cooper-Hughes statewide tax revision legislation¹⁴ which failed to pass the House of Delegates by the constitutionally required 51 per cent of the total number of delegates (72 out of 143). In part, the defeat of this tax revision legislation was caused by the accumulation of bills at the end of the session. Delegate Thomas Hunter Lowe has noted that "the 'logjam' made it virtually impossible for all the members to properly assess that bill, and some favorable votes might have been mustered, had there been more time."¹⁵ The House vote was 70 to 63 in support of the tax revision legislation, with most of the "yeas" coming from Baltimore City delegates. In sharp contrast, a similar bill containing State equalization benefits for economically impacted areas passed the newly reapportioned Legislature in 1967 by 35 to 8 in the Senate and 110 to 17, with 16 abstentions, in the House.

¹⁴SB 13 (Subject: "Alcoholic Beverages," subtitle "Taxation"), which would have authorized a 3 to 6 per cent graduated income tax, estimated to raise \$98,728,600 in new State revenues, \$68,303,100 of which would be earmarked for financial assistance to local governments in Maryland. The tax revision program was attached in as a routine alcoholic beverages bill. For additional analysis of this bill, see Chapter II.

¹⁵Interview with Delegate Thomas Hunter Lowe, February 13, 1969.

A roll-call analysis of the 1966 Cooper-Hughes defeat reveals that rural legislators in both Houses tended to oppose statewide tax revision, as did Baltimore County senators and delegates whose conservatively oriented and "political organization" power base of county-wide, at-large elections was threatened by both reapportionment and division of the County into three-man House districts. Among the 12 senators who opposed the measure, 8 were from the rural sections of the State (the Eastern Shore and counties to the northwest of Baltimore County). Surprisingly enough, some suburban senators lined up against the 1966 tax bill, largely because the suburban areas would be assessed a large percentage of the new programs' added costs and because their respective power bases would be diluted by reapportionment in the following year's session (1967). Among the senators who voted against the 1966 tax reform were Baltimore County's Senator James Pine who, as noted earlier in this chapter, had expressed reluctance to support reapportionment primarily because of a fear that his political power base would be weakened. Pine's reasoning against the 1966 tax measure was simply: "Baltimore County will have to pick up a big part of the tab. The City had better put its own house in order before it comes to the counties for help."¹⁶

Former Senator, now Congressman Gilbert Gude (R., Montgomery County) and Senator Fred Wineland (D., Prince George's County), who both represented Washington, D.C. suburban counties with more liberal

¹⁶ Interview with Senator James Pine, op. cit.

its first 70 day session today without having enacted a major piece of legislation." Three weeks later on March 13, the Baltimore News American reported that "The Legislature plunges into its final two weeks with more than 1,000 bills still awaiting committee action, only 171 acts bearing the Governor's signature, and still no major piece of legislation enacted."

The 1966 legislative session drew similar unfavorable editorial comment. On February 22, the half-way mark of the session, the Evening Sun observed that only one piece of major legislation had passed and, out of 630 bills introduced in the House and 301 in the Senate, only 40 had been enacted. The Sun's concluding observations on the 1966 legislative effort were effectively summarized in a biting editorial--"The 70 Day Flop."¹⁸

Supporters of the Legislature could dismiss these editorial comments as merely part of a continuing battle between press and politician, between the news media with their desire to publicize the private nature of legislative negotiations, and the legislators with a distinct taste for unpublicized maneuvering room. But in a larger sense, they were reflective of serious internal operating weaknesses that hindered the process of enacting legislation during the annual 70-day meeting.

One of the earliest complaints about "the system" was expressed in December 1964 just before the 1965 legislative session convened.

¹⁸The Sun (Baltimore), March 31, 1966.

Delegate Alexander Stark (D., Baltimore City, 5th District) recommended "substantial" changes in the General Assembly committee system, specifically the creation of two new committees-- budget and science-health. The rationale behind the budget committee recommendation was "the need to make a detailed and unhurried analysis of the budget without any other pressures."¹⁹ Stark also proposed that the chairmen and vice chairmen of all subject matter committees sit and vote as budget committee members when their particular committee's bills were being decided. With reference to science and health legislation which, at the time of his statement, was assigned to the Judiciary Committee, Stark recommended that an advisory board of physicians and scientists be appointed to provide technical assistance to the science-health committee. Emphasizing that "professionalism" was necessary to improve committee operations, he further advised that "dead wood among the standing committees of the House be eliminated so that delegates' time can be channeled into fruitful activity--one of the major disgraces of the Legislature is permitting committees to exist only on paper, giving the illusion that we are doing something in areas where, in fact, nothing is being done."²⁰

In February 1965, Delegate Stark suggested immediate action on his committee reorganization proposals beginning with dissolution of all inactive standing House committees such as Civil

¹⁹"Legislature Changes Urged by Delegate," The Evening Sun, December 30, 1964, pp. 3-6.

²⁰Ibid.

Defense, Veteran's Affairs, Militia, and Entertainment. Official reaction to the Stark proposals was silence, almost apathy, until March 14, 1966, when House Speaker Marvin Mandel proposed that the 18 standing House committees be reduced to 5 with 28 members serving on each of the following: Ways and Means, Banking and Insurance, Natural Resources and Health, Education and Welfare, and Judiciary. For scheduling of workload, the Speaker recommended that these committees meet four days a week with the fifth day allotted for county and Baltimore City delegations to caucus to transact the great volume of local legislation thrust upon the Assembly each year. However, nothing in the recommendations referred to interim or between-session work of these units.²¹

The State Senate, instead of recommending committee change through its President Williams S. James, examined the validity of its committee operations through the Committee on Organization and Procedures. The resulting proposal included reduction of the 20 standing committees, staffed by 23 senators, to 3 major units-- Finance, Judiciary, and a "catch-all" committee to process legislation pertaining to agriculture, natural resources, banking, insurance, transportation, and other matters traditionally referred to minor committees.²²

²¹Speaker Marvin Mandel's committee reorganization proposals reported in The Evening Sun (Baltimore), March 15, 1965, p. B.25

²²The proposals of the Senate committee on Organization and Procedures, as reported in The Evening Sun (Baltimore), May 24, 1965.

These committee reorganization proposals were not readily accepted by the General Assembly membership at large for two reasons. First, Speaker Mandel, while recognizing their utility, emphasized that "at that time, the members saw little to gain from committee change. Reapportionment was going to remove some of them from office, resulting in resentment of reform at the time I made this progressive proposal--progressive, at least for the Maryland legislature. Many of the rural delegates saw the suggestion as just another way to decrease their power even if that power only meant the chairmanship of some minor committee."²³

Second, while Mandel held great sway over the House of Delegates, other legislative leaders had reservations about the plan when first offered. Thomas Hunter Lowe (D., Talbot County), chairman of the House Judiciary Committee, questioned "whether there were really enough qualified men to sit on a large or small number of committees, and I don't know whether reapportionment is going to do that much to improve the quality. There are only a few members that really do the work on committees anyway, and most of that work is done in Judiciary and Ways and Means."²⁴

²³Interview with Speaker Mandel, November 10, 1965.

²⁴Interview with Thomas Hunter Lowe, March 2, 1966. Delegate Lowe was to testify formally on this subject before the author's study group on legislative reorganization in a hearing, May 7, 1966. By that time he had become more receptive to reduction of the number of committees, but expressed reservations concerning any shift of power from the House leadership to a group of committee chairmen.

C. THE LEGISLATIVE LOGJAM: SESSION LENGTH

Committee reorganization was only one reform suggested for legislative mismanagement and a resulting poor image of the General Assembly that developed in the news media, largely from the 1962 and 1966 reapportionment battles and the 1966 tax bill defeat. That image was typified by an Evening Sun editorial of March 14, 1965, which decried a "legislative logjam on which the flood of legislation--2,101 bills with a handful yet to come-- has kept committees working overtime and has lengthened floor sessions to the point that the average legislator is tired and the leaders are dog-tired . . . day and night sessions will be the rule from now on."

This logjam condition was not without its causes, and during the 1965 and 1966 General Assembly session, a few legislators were willing to publicly identify those causes. Less than one month before the "logjam" editorial, Senator Fred Wineland (D., Prince George's County) had recommended a 90-day session, noting that "those who consider a \$760,000 budget of public money should not be forced to rush through any part of it due to lack of time."²⁵ Because the length of session is included as a provision of the Maryland Constitution,²⁶ the General Assembly could do nothing by

²⁵ Senator Fred Wineland, as reported in The Evening Sun (Baltimore), February 24, 1965.

²⁶ The Constitution of Maryland with amendments to January 1, 1965 (Published by the Secretary of State of Maryland), Art. 3, sec. 15, p. 20.

internal rule to increase the annually authorized 70 days, thereby permitting more time for the completion of legislative business.

Wineland had set the stage, however, for more serious pressures one year later after the Cooper-Hughes tax revision measure had been narrowly defeated in the waning hours of the 1966 session. On March 31, 1966, immediately after the Assembly had adjourned, the Sun editorially proposed that the fixed time limit of the legislative session be removed: "As long as there is a fixed limit, it seems that a lot of important business is going to be put off until the last minute. It may be a tradition, but it is a stupid and indefensible tradition."

This editorial criticism did not imply that a session should continue on a year-round basis, but rather that legislators should honor their own cutoff date for introducing bills. "Hundreds of bills are placed in the hopper after the deadline, causing additional pressure for time. The legislative leaders, as well as committee chairmen, must cooperate in bringing important bills to action in a steady, measured flow . . . If the General Assembly would devote itself to doing its job in a reasonably systematic manner, it should be able to complete business in a reasonable length of time without having to follow a constitutional time clock. In this way, the unnecessary confusion and congestion of the kind the State has just seen in this 1966 session can be avoided."²⁷

²⁷The Evening Sun (Baltimore), editorial, March 31, 1966.

D. THE LEGISLATIVE LOGJAM: LOCAL BILLS

In addition to the length of annual session, the heavy volume of local legislation was criticized as an unnecessary drain of the Assembly's time when localism, at least of the rural variety, would soon be ending with reapportionment. On January 23, 1965, the Sun had observed that "the local bill nuisance has come to flower at the earliest possible moment in the General Assembly session. In one day, Senator Hughes of Caroline County introduced 22 bills, and Senator Weant of Carroll County introduced 20 bills. Neither man is regarded as trying to fill the hopper, since local legislation is part of the job of the State Legislature. But it is bad business for the lawmaking branch of the State Government to be forced to devote time and attention to minor local matters." One year later, the News-American directed its criticism at the Assembly for sacrificing consideration of the statewide policy matters for local bills: "Issues such as tax reform, congressional redistricting, reorganization of the Baltimore Police Department, hand gun control, the construction of a second Bay Bridge, and traffic safety have not even been discussed."²⁸ The editorial criticized the Senate for "ending the 1966 session in traditional fashion by going over local legislation. . . . If the members would introduce fewer bills of the sort which regulate the season of catching snapping turtles in Charles County, they would have time for the consideration of important statewide issues."

²⁸The News-American (Baltimore), March 21, 1966.

Although procedures exist for charter or code home rule in the Maryland Constitution,²⁹ local self-government exists in only five of Maryland's counties (Baltimore, Anne Arundel, Howard, Wicomico, Montgomery) and Baltimore City. Even when home rule has been approved by the majority of a county's voters, the General Assembly under "the express powers" provision of the Constitution retains the right to grant only the powers it so authorizes to local subdivision.³⁰ Therefore, for those counties without home rule, the Legislature is the only forum for enactment of its laws, and even where self-government has been approved by the charter or code process, the Assembly could still retain the initiative in certain lawmaking powers, particularly taxation and financial authority. While it is not always clear whether a bill is purely local in character, or has provisions that may concern parts of the State beyond the directly affected county, it has been estimated that "during the period of 1960-1966, almost 50 per cent--sometimes more--of the bills considered by the Legislature in one session are local rather than statewide in character."³¹

The volume of local bills enacted by the Assembly may not be a serious drain on its time for formal debate and decision, primarily because of the institution of "delegation courtesy" whereby

²⁹The Constitution of Maryland, Article II-A.

³⁰Ibid., Art. 11-A, sec. 2.

³¹Interview with Dr. Carl Everstine, Director of the Maryland Legislative Reference Service, June 10, 1966.

the entire body usually accepts the wishes of the sponsoring delegation on a local bill. But "delegation courtesy" itself is a serious defect in the Assembly's powers over local legislation. A classic example of this kind of logrolling occurred in the 1965 session when the Legislature failed to express any opinion on the merits or demerits of Baltimore county urban renewal legislation-- a program with implications for the Baltimore City metropolitan area--simply because the bill did not have the support of the county delegation. Federal aid, and in all probability some state funds, would have been required to develop urban renewal in Baltimore County, but because of local courtesy the bill never progressed further than the delegations' weekly meeting where bills unacceptable to the county legislators are not usually brought before the full House. Although Baltimore County's government held home rule power in 1965, its legislative delegation was able to take advantage of local initiative available to all delegates from counties that lacked home rule. It has been said that "some form of home rule, plus a shift from 'express powers' (whereby the Legislature grants to the subdivision only that local lawmaking authority it wishes to authorize) to 'shared powers' (where the subdivision holds all powers except those specifically withdrawn by the Legislature) would remove much of the parochialism of county delegations and direct their attention to statewide matters."³²

³² Interview with Dr. Robert Loevy, Research Director, Local Government Article Committee of the Maryland Constitutional Convention Commission 1965-1967, and Research Director of the Legislative Article Committee of the Maryland Constitutional Convention September

E. LEGISLATIVE SALARY

Another issue raised during the 1965 and 1966 sessions that indicated the need for internal improvement of a reapportioned Assembly was the legislative salary. At the time of the 1966 Assembly session (and currently because of the May 1968 defeat of the proposed Constitution), annual pay for Maryland legislators as authorized by Article 3, section 15, was \$2,400 with a deduction of \$15 per day of unexcused absence. Presiding officers receive an additional \$250. Article 40, section 1, provides for travel expenses in stated amounts, depending upon the distance of the area represented from the State Capitol in Annapolis.

Because of the \$2,400 constitutional limitation, Maryland legislators had authorized themselves by 1966 a "per diem" allowance of \$25 per session day, thereby increasing each member's salary by \$1,750 for a 70-day session. The base pay of \$2,400 was as authorized in the Constitution and the \$1,750, plus smaller allowances for administrative expenses, totalled a compensation of \$4,200 per year. A legislative pension plan had also been adopted and is both analyzed and criticized in detail in Appendix .

Prior to the 1966 and 1968 Assembly reform programs, the primary criticism of a legislator's pay was not its amount, but rather its lack of visibility. The public was generally not aware

1967-January 1968), December 20, 1966. For a description of the General Assembly procedures with respect to local legislation, see George Bell and Jean E. Spencer, The Legislative Process in Maryland (University of Maryland Press, 1963), pp. 5-8. For an analysis of the "shared powers" and "express powers" concept, see Report of the Constitutional Convention Commission (Baltimore: King Bros., 1967), pp. 243-246.

of the per diem allotment, and many citizens who did have knowledge of it classified it as an "under-the-table payoff" or a "salary grab."³³

F. REORGANIZATION PROGRAMS FOR MARYLAND GOVERNMENT

Whether the problem was reapportionment or legislative committee organization or Assembly members' salaries, it was clear by early 1966 that the operations and the public image of the Maryland Legislature had become a matter of public concern. Indeed, public concern had developed about the condition of the entire State government in Maryland by 1966. In late 1964, the Cooper Commission (named for the Maryland Legislature's Fiscal Research Director, Dr. Paul Cooper) had begun its study of the State's fiscal structure that would culminate in the drafting of the Cooper-Hughes Tax Reform Bill of 1966. A study commission, chaired by Court of Appeals Judge Emory M. Niles, proposed a "non-political" system of selecting state court judges whereby they would run for re-election against their record instead of in a political campaign process against a live opponent. "The Niles Plan" would serve as the basis of the Judicial Article that was to be drafted by the Maryland Constitutional Convention in 1967.

On March 22, 1966, Governor J. Millard Tawes recommended a "sweeping study of the State government with a view towards modernizing and strengthening Maryland's Executive Branch."³⁴ He revealed

³³ Louis Azrael, "Are You For or Against a Grab?" The News-American, November 3, 1966.

³⁴ Governor Tawes' recommendation, as reported by The Evening Sun (Baltimore), March 22, 1966.

his intention to appoint a bipartisan commission to study a number of areas that had been of concern to him as Governor, among them: the feasibility of an Office of Local and Metropolitan Affairs; a coordinator of Federal affairs for the State of Maryland; and broad-scale reorganization of executive agencies, under "a little Hoover Commission-type of plan."³⁵ Governor Tawes created his own "Hoover Commission" in the form of the Governor's Committee to Reorganize the Executive Branch, chaired by McCormick Company president John Curlett.

G. CONSTITUTIONAL REVISION AND THE NATURE OF THE STATE GOVERNMENT REFORMER

The most formidable program for Maryland government reorganization was the calling of a Constitutional Convention, preceded by the gubernatorial appointment of a preparatory study commission. An implementing provision of the 1867 Constitution provided for the calling of a convention to revise the charter every 20 years if the State's voters so decided. In 1950, by a 3-1 margin, the voters endorsed the calling of a convention. But because of the fear of reapportionment, the Legislature, supported by the advisory opinion of U.S. Solicitor General Philip Perlman, did not interpret the call for a convention as a mandatory electoral decision. The Legislature based its action on the fact that although the call had been

³⁵ Ibid.

endorsed by a heavy preponderance of those voting on that single question, this was less than the majority of those voting in the election.

On January 31, 1965--fifteen years after the abortive attempt to call a convention--Delegate W. Dale Hess (D., Harford County), House of Delegates' Majority Leader, announced that he would sponsor a bill to put the calling of a constitutional convention on the ballot in 1966. On February 8 during that same 1965 session, Governor Tawes requested the Legislature to establish a 21-man commission to study and draft proposed revisions of the Maryland Constitution."³⁶

This plethora of activity in behalf of Maryland government reorganization that began in 1962 with reapportionment and continued into 1966 with numerous study commissions was a supportive background for an intensive program of modernizing the General Assembly. Involvement of the private sector characterized and would continue to characterize many of these programs of State government reorganization both through citizens serving on reorganization commissions and civic groups encouraging reform programs. It is this "citizens' participation" that to a large extent generates and characterizes the politics of reform, particularly on the state and local government levels where contact between the private and public sectors more frequently reaches the individual citizen who, because of a lack of specialized training and expertise, may never participate in a national government reorganization program.

³⁶ Governor Tawes' proposal for a commission to study revisions of the Maryland Constitution, as reported in The Sun (Baltimore), February 8, 1965.

In analyzing the environmental conditions that favored government reform in Maryland from 1960 to 1966 and the role of the private sector in getting State government to modernize its operations, two observations, from the 1968 conference on legislative modernization held at the Johns Hopkins University, are appropriate. Mr. George S. Morrison related the role of citizens without specialized training to programs of government reform: "To modernize state government, it is necessary to adjust to time-consuming legal and legislative procedures, to overcome the fear of change, and to mediate the conflicting interests of individuals and groups. Without public support, the job becomes difficult and almost impossible."³⁷

Morrison's generalization is applicable to the reform programs that were organized to modernize Maryland's Legislature from 1966 to 1968 and the State Constitution from 1965 to 1968. The succeeding chapters will indicate the presence of public support for both programs; but a major facet of Maryland's politics of reform during these three years is how much public support could overcome normal resistance to change and whether the reformer could formulate sufficient areas of agreement among conflicting interest groups so that change could be implemented. In Maryland from 1965 to 1968, the challenge to implement reform programs was substantially more difficult than drafting the content of specific recommendations.

³⁷ Remarks by Mr. George Morrison, Secretary, U.S. Chamber of Commerce, before Mid-Atlantic Regional Conference on Strengthening the Legislature, February 15, 1968; transcript of Proceedings, pp. 148-149.

Mr. Francis X. Gallagher, chairman of the Maryland Constitutional Convention's Legislature Article Committee, observed at the Johns Hopkins conference that "although reapportionment did bring about a more equitable distribution of seats, it really hasn't changed the power structure and leadership structure of the Maryland General Assembly. Why?--because the same people, by and large, who were in control of many of the powerful committees prior to reapportionment are still in the same positions of power after reapportionment."

Mr. Gallagher accurately diagnosed one of the basic problems facing the legislative reformer in Maryland. While his diagnosis is in part correct, his prescription and prognosis may not have been as accurate. Noting that his committee was more impressed with broad, prescriptive programs of reform than the practical reservations expressed by some legislators, Mr. Gallagher admitted that "consequently, I suspect President Eney [H. Vernon Eney, President of the Maryland Constitutional Convention] believes that if there is one area of agitation over the Constitution which is causing difficulty, it is the section on the Legislative Branch. I plead guilty to that, but I don't think it should be enough to carry the day against us, and I am quite certain that the legislators elected under this new Article will think it is the finest ever written. Those who fail will not be in a position to influence the future in any event."³⁹

³⁸Ibid., remarks by Francis X. Gallagher, p. 123.

³⁹Ibid., p. 128.

With the advantage of hindsight and recognizing that Gallagher's observation was spoken three months before the special election on the proposed Constitution, it would appear that the politics of reform practiced by the Citizens Commission on the General Assembly and the Eagleton Institute were more attuned to the Maryland environment, as examined in Chapters III and IV, than the reform politics practiced by the Maryland Constitutional Convention. Mr. Eney's concern about the political and to a lesser extent public response to constitutional reform of the Legislature was justified, as will be examined in Chapter IX, "Why Was the Proposed Constitution Defeated?" Reform of the Assembly's operations--administrative and procedural--has proceeded more slowly and less dramatically, but to date more successfully.

It is clear that a favorable environment, as analyzed in this chapter and Chapter III, can create the conditions for government reform. But the success of reform may be more dependent upon the relations between the reformer and the governmental institution being reformed, including the participants in that institution. The influence of the reformer over the reformed may be strengthened by public support, but it must be remembered that citizen participation must be carefully nurtured and can be very quixotic.

PART THREE

LEGISLATIVE MODERNIZATION IN MARYLAND

CHAPTER VI

THE POLITICS OF REFORM AND RESPONSIVENESS TO CHANGE

As stated in the Introduction to this dissertation, legislative modernization in Maryland is closely related to the politics of reform. But reform in state government has largely been associated with the increasingly complex demands made upon the executive branch. These massive policy demands, which the changing environment including urbanization has placed on legislative bodies lacking the tools to meet their obligations, have led to such observations as David B. Truman's that "the twentieth century has been hard on legislatures."¹ Although public discontent over the performance of state legislatures is not new, the convergence of a concept and a condition suggested the possibility of professionalizing the Maryland General Assembly. The concept, identified in Part One, is a need for the state legislature to become both more responsible and responsive in a pluralistic society. The condition is a favorable climate of public opinion for reform which, as explained in Part Two, began to take form and develop in Maryland from 1960 to 1966. And, as will be explained in Part Three, a

¹David B. Truman, ed., Congress and America's Future (Englewood Cliffs: Prentice Hall, 1965), p. 3.

favorable public opinion and the need for modernization resulted in programs to modernize the legislative branch of Maryland's government. These programs include 1) examination of the Legislature by a nonprofessional group (The Citizens Commission on the General Assembly); 2) development of public support for its recommendations through hearings and use of the news media, and creation of support from Senate and House members themselves; 3) examination by a professional, scholarly organization (The Eagleton Institute of Rutgers University) with primary emphasis upon ascertaining the administrative and procedural requirements necessary to develop a more effective legislative process; and 4) revision of the Legislative Article by the Maryland Constitutional Convention.

To no small extent, the workings of these three programs are interrelated and are part of the "politics of reform" that has been identified in the Introduction as a basic ingredient of governmental reorganization. The adoption of reforms has not been immediately forthcoming, and there has not been a total response to change, either in the internal reforms recommended by the Citizens Commission or the Eagleton Institute and in the constitutional changes proposed by the Constitutional Convention. However, favorable response has been generated by some recommendations for modernization and from some government leaders for rather unexpected reasons. In order to come to any conclusions about the success of certain recommendations and the failure of others, it is necessary to understand the concept of "responsiveness to change," as perhaps the most important ingredient

of the politics of reform. This responsiveness can be defined as a legislature's willingness to implement recommended proposals for alteration of its organization and procedure.

"Responsiveness to change" is a useful concept to discover the underlying influences which have encouraged or prevented legislative innovation during the last decade of increased public concern about the viability of state government. The use of this concept may also ascertain the presence of intervening variables whose influence upon the legislator may ultimately be more important in his response to change than his expressed attitudes. The conventional notion of reform implies an orderly progression from premise to recommendation to implementation, but according to a recent analysis of the United States Congress by Davidson, Kovenock, and O'Leary, these requirements seem to be too rigid and demanding in their application to large political decision-making organizations.² If reform is equally "untidy" for the state legislature, then "responsiveness to change" is better understood through analysis of the linkage between expressed attitudes and actual decision on proposals for reform.

It would seem that every institution ought to be adaptable to change if and when the situation warrants. "Many institutions are able to survive over time by radically changing their work patterns while still clinging to symbolic elements of their historic past. With these anachronistic symbols, an institution may seek to maintain the fiction of changelessness, and thus to resolve the tension

²Roger H. Davidson, David M. Kovenock, and Michael O'Leary, Congress in Crisis: Politics and Congressional Reform (New York: Hawthorne Books, Inc., 1967), pp. 52-62.

between stability and innovation."³ One distinction between the two modernization studies of the Maryland Legislature and the Constitutional Convention may have been the latter's unwillingness to adequately balance change with stability in order to gain the support of legislators who, as political elites, could favorably influence public support for constitutional reorganization. This lack of balance does not appear to have been present in the Citizens Commission and Eagleton reports, or at least in the legislators' perceptions of those reports.

Investigation reveals that comparatively little research has been done on the politics of reform, particularly as related to state legislatures. Traditional analysis has focused on the technical, procedural, and administrative problems facing legislative bodies and solutions to those specific problems. Chapters VII, VIII, IX, and X will focus on the proposed solutions to Maryland's alleged legislative deficiencies, but equally important will examine the process by which those recommendations are formulated and the means employed to generate support for them. For internal administrative change and for constitutional revision, the support of the legislators themselves is critical.

Role theory, as developed by Wahlke, Eulau and their associates, provides some perspectives on a legislator's attitude toward reform. A legislator's perception of his purposive role in the

³Ibid., p. 92.

Assembly may be a determining factor in the way he evaluates the matter of reform and change. If he sees himself as an "inventor" or problem solver, and if he is frustrated by the rules and procedures in his attempt to formulate policy, it would logically follow that he would favor reform proposals that would permit him more flexibility in the accomplishment of his objectives. The "tribune" also might support modernization proposals in situations where his constituents make demands upon policy output. On the other hand, the "ritualist" who defines his functions in terms of procedures and routines rather than legislative innovation, could be expected to resist change. The "broker," concerned with the balancing of many interests in the legislative system, might oppose reform on the grounds that complex rules slow the procedural pace sufficiently to allow time to bargain.⁴

In evaluating the Citizens Commission public hearings and report, the Eagleton report, programs to implement those reports, and the Constitutional Convention, it is necessary to evaluate certain influences on the legislator's attitudes toward reform, in addition to how he views his operative role within the Assembly. Davidson, Kovenock, and O'Leary believe that "the stimuli to oppose or support the general notion of reform apparently stem from sources other than a Congressman's personal and social background."⁵

⁴For analysis of the role perception of legislators, see Wahkle, Eulau, Buchanan, and Ferguson, The Legislative System (New York: John Wiley & Sons, Inc., 1962), pp. 384-431.

⁵Davidson, Kovenock, and O'Leary, op. cit., p. 81.

Instead of educational, occupational, and previous political experience⁶ playing the dominant role, these authors found other factors to be influential: Partisan affiliation played a prominent role, Democrats being more likely to favor reform than Republicans.

Urban representatives and members from competitive districts are more disposed toward reform than those from rural areas or in "safe seats." With the changes created by population shifts in Maryland and reapportionment of the Assembly, these urban influences would appear to become more dominant in the House and Senate than before reapportionment. Because Maryland politics is dominated by one party, it can be expected that the majority Democratic party in the Legislature will include factions that will more readily support internal and constitutional modernization than other more cautious elements. In this connection, the role of the Assembly leadership and members of the Legislative Council are of particular significance.

The formal leadership position or the informal influence of a legislator in the General Assembly itself may affect his attitude and actions in behalf of reorganization. As a general rule--although not as discernible as in Congress--seniority or at least experience brings with it an increase in power within a state legislature. Also, this seniority or experience may help to foster a degree of institutional loyalty. The very expectation of power may serve to inhibit responsiveness to reform proposals.

⁶For analysis of the impact of political, professional, and social background on members of the United States Senate, see Donald R. Matthews, U.S. Senators and Their World (University of North Carolina Press, 1960, Vintage Book edition), pp. 11-57. Matthews places more emphasis on the background than does Davidson et al.

In the same way that blending change with symbols of stability may engender broad legislative approval of reorganization, so also might the reformer cultivate the leadership group by a supportive approach--"we are here to help you, not to muckrake. Our function is to call public attention to the needs of your branch of government as well as its inadequacies, and to develop public support for a stronger legislative body in relation to the executive and judicial branches." This approach, largely adopted by the Citizens Commission and the Eagleton Institute, contrasted with the legislators' perceived frame of reference about the Constitutional Convention's efforts to revise the Legislative Article. The supportive posture by the administrative and procedural reformers may have developed a more favorable leadership view of reform than was originally contemplated by the reformers themselves.

If the reformers adopt a cooperative approach, coupled with their continuing explanation of reorganization recommendations to the public (a reminder to legislators that public opinion is relevant), legislative support can be increased. But one problem remains--reform measures can be unattractive to the senior members of the majority party in the General Assembly because those individuals personify the "power structure" and might be unwilling to take action that could reduce their political influence. Reformers must recognize that reorganization which alters the power structure is less likely to be adopted than those changes allowing the body to become "more efficient" and "more modern." The distinction

would seem obvious. But recognition of the two approaches is particularly critical in broad areas of administrative change that may correspondingly diffuse the authority of the leadership. The power structure of a legislative body can be altered or weakened by the following "administrative" changes:

1. Committee reorganization where reduction in the number of committees creates added burdens, but also more influence for the remaining and newly created major committees. Added influence and power may accrue to new committee chairmen who previously had lacked those prerogatives.

2. Alteration of the powers and functions of the Legislative Council as the interim study, drafting, and policy group of the Legislature. The leadership of the entire assembly usually constitutes the Council, and no reformer can forget that elimination of this smaller body, or redistribution of its authority, affects the individual legislators who hold seats thereon.

3. Creation of a more powerful legislative oversight function over the State budget through such devices as a joint budget committee that specializes in "legislative alternatives" to the governor's spending programs. Because of "the power of the purse," such a committee, including its chairman and key members, might become as influential as, if not more than, the established or formal leadership group of the entire Legislature.⁷

⁷The classic work on the power of a Congressional finance committee, the House Appropriations Committee, its formal and informal powers, its mores and influence of its members in the House, is Richard F. Fenno, The Power of the Purse: Appropriations Politics in Congress (Boston: Little, Brown and Co., 1966).

4. Creation of greater visibility to the public of the legislative process and the activities of legislators themselves through such reforms as stricter conflicts of interest laws; public hearings of committees; central accounting procedures of administrative expenses; and democratization of the rules of procedure of debate and floor proceedings.

Adoption of the preceding broad areas of reorganization would reduce many of the reformer's objections to the practices and procedures of contemporary state legislatures. However, these areas also possess the potential to weaken established power and, as a result, prevent substantive reform. Therefore, specific recommendations must emphasize and effect "modernization" or "efficiency" as more important goals than redistribution of power.

Assuming that cooperation of the Assembly's leadership or power structure can be gained by the reformers, what are the implications of the politics of reform? What will positive response to change produce? In the Introduction, reference was made to Nelson Polsby's 1968 article "The Institutionalization of the U.S. House of Representatives."⁸ This significant article is relevant to Chapter XIII and its analysis of legislative reorganization after the defeat of the proposed new Maryland Constitution on May 14, 1968. At that time the Legislative Council's Committee on Organization and Procedure, a special panel established and chaired by the Speaker of the House, Marvin Mandel, was in the process of studying the recommendations of

⁸The American Political Science Review, LXII, No. 1 (March, 1968), pp. 144-168.

the Citizens Commission and the Eagleton Institute. This committee began to examine these recommendations in December 1967 and continued to hold hearings through September 1968. The major focus of its work has been the reorganization of Senate and House committees, including the means by which participation of the total membership in legislative work could be increased. But as important as the decisions that emerged from this committee is the new environment that may be created in a reorganized and "more efficient" General Assembly.

In analyzing "institutionalization" of the U.S. House, Polsby identified as one of its characteristics "the growth of internal complexity" manifested by "the growth of autonomy and importance of committees, the growth of specialized agencies of party leadership, and by the general increase in the provisions of various emoluments and auxiliary aids to members in the form of office, space, salaries, staff aid and committee space."⁹ After the 1946 Act, these three broad areas of legislative reorganization were to change the character of the Congress, creating more specialization by individual members, more regularity and predictability of decision-making, and even a fairly normal pattern of leadership change. If the scholar were to place state assemblies today at a point of development generally commensurate with that of Congress in 1946, then the impact of reorganization might be assessed by how it will stabilize and institutionalize the particular legislature under examination. In

⁹Ibid., p. 153.

the Maryland Legislature, organizational and procedure changes have not been in effect long enough to measure outputs of legislation from a series of Assembly sessions before, as compared with after many of the 1966-1968 reforms were implemented. But the effect of these changes upon the attitudes and actions of legislators in a context of "institutionalization" may indicate trends for a very different Maryland Assembly in the future.

As the hearings of the Mandel committee progressed into August 1968, it became clear that the Assembly leadership was recognizing an increased complexity in the legislative process. From the view that "more comprehensive, technically correct legislation is needed to meet current complex economic and social problems" to another approach that "we must specialize and play less old-fashioned politics to protect ourselves from the bureaucrat,"¹⁰ it is evident that many Maryland legislators were aware that the politics of reform could change their legislative and political roles.

Polsby also notes that "institutionalization has in the House on the whole meant a decentralization of power."¹¹ Decentralization has generally implied less discretion for the Speaker and other House leaders in exercising political power. The lessening of discretion has come through increased responsibility and authority for individual committees and their chairmen, as well as a more definitive role for the individual member in the form of committee

¹⁰From notes taken at the hearing of the Legislative Council Committee on Organization and Procedure, the two views expressed are those of Senator Blair Lee and Senator Roy Staten, respectively.

¹¹Polsby, op. cit., p. 166.

specialization or carefully developed training for either subcommittee, committee or assembly leadership. Chapter IX will identify this awareness by Maryland legislators of the implications of institutionalization for the General Assembly. As with the U.S. House, the institutionalizing process may serve to increase the power of the Legislature within the government of Maryland and to distribute more widely the incentives for legislators to participate actively in policy-making. Perhaps this is the most important contribution of the politics of legislative reform.

CHAPTER VII

PRESSURES FOR CHANGE: LEGISLATIVE REORGANIZATION
IN MARYLAND; ENTER THE CITIZENS COMMISSION
ON THE GENERAL ASSEMBLY

A. INTRODUCTION--THE BIOGRAPHY OF A COMMISSION

The history of the Commission on the General Assembly is a story of citizen participation in government and of an idea being translated into action. Organized as a special study by the Young Democratic Clubs of Maryland in March 1966, the Commission received early encouragement from many State political leaders within and outside the Legislature.

Legislative modernization and reform is predicated upon a belief that, "with few exceptions, our states have failed to meet many of the modern needs of their citizens." These words were written in the March 1966 issue of Harper's Magazine by Senator Joseph D. Tydings (D., Maryland), who also expressed the belief that "these failures, which John F. Kennedy called 'the shame of the states,' are primarily responsible for the decline of our Federal system." Senator Tydings gave early encouragement to the General Assembly study and was soon followed by the Honorable Marvin Mandel, Speaker of the Maryland House of Delegates, at the Commission's first public hearing on April 16, 1966.

Speaker Mandel presented a series of recommendations on committee organization, legislative budgetary, procedures, professional staffing, and salaries that were to be repeated, revised, and expanded upon during the subsequent 17 public hearings held by the Commission. A total of 30 legislators, political leaders, State government administrators, and representatives of industry testified at these hearings, held from April to December 1966.

Shortly after the April 16 hearing, the study group expanded its membership to include representatives from the State's Young Republican Clubs. In June 1966, the Commission again enlarged its membership to include a panel of Maryland business, corporate, labor and civic leaders who participated in the evaluation of and review of the final Report.

Detailed recommendations on legislative modernization were submitted to the Commission by:

J. Millard Tawes, former Governor of Maryland

Spiro T. Agnew, Governor of Maryland

William James, President of the State Senate

Marvin Mandel, Speaker of the House of Delegates

Daniel B. Brewster, Senior U.S. Senator from Maryland

Joseph D. Tydings, Junior U.S. Senator from Maryland

Charles McC. Mathias, U.S. House of Representatives

Samuel Friedel, U.S. House of Representatives

Carlton R. Sickles, U.S. House of Representatives and candidate,

Democratic gubernatorial nomination

Thomas B. Finan, former Attorney General of Maryland and
candidate, Democratic gubernatorial nomination

Clarence W. Miles, candidate, Democratic gubernatorial
nomination

James Clark, Maryland State Senator

Thomas Hunter Lowe, Chairman, House Judiciary Committee

J. Glenn Beall, Jr., House Minority Leader

Goddloe Byron, State Senator and former Member of the Maryland
House of Delegates

Julian Lapidés, State Senator and former Member of the Maryland
House of Delegates

Joseph Curran, Maryland State Senator

Charles S. Bresler, former Member of Maryland House of Dele-
gates and Republican candidate for Comptroller

Steny H. Hoyer, State Senator

Harry McGuirk, State Senator and Member of the Governor's
Committee on Legislative Automation

Martin Becker, Member of the Maryland House of Delegates

Walter S. Orlinsky, Member of the Maryland House of Delegates

Dr. Carl Everstine, Director, Maryland Legislative Reference
Service

Dr. Paul Cooper, Director, Maryland Bureau of Fiscal Research

Mr. C. M. Price, RCA State and Local Government Representative

Mr. Max Baldwin, I.B.M. State and Local Government Division

Hon. John Coleman, Data Processing Division, Office of
Comptroller of Maryland

Christopher Pfrommer, candidate, Democratic State Central
Committee and administrative assistant, Congressman
Clarence D. Long (D., Maryland)

Dr. Eugene Weigman, specialist on the Nebraska unicameral
Legislature

The witnesses who testified before the Commission identified several major facets of legislative reorganization, including (1) reduction of the number of committees and establishment of major committees operating on a year-round basis; (2) professional staffs; (3) higher salaries for legislators; (4) improved physical facilities; (5) effective legislative oversight and review of the Administration's budget; (6) length of session; (7) uses of automation, particularly in the areas of fiscal research and information retrieval on pending bills and enacted legislation; and (8) examination of the merits and demerits of a unicameral legislature.

The Citizens Commission issued a report in January 1967, containing 46 recommendations for modernizing the administration and procedures of the Maryland General Assembly. From January 1967 until December 1968, the Commission worked with the members of the Legislature to implement its proposals and those of the Eagleton Institute report established by Speaker Mandel. That implementation is the story of Maryland's politics of legislative reform.

B. PUBLIC HEARINGS OF THE CITIZENS COMMISSION

In March 1966, Senator Joseph D. Tydings (D., Maryland) decried the low visibility of the Maryland General Assembly to the electorate, caused by what he termed "low output, antiquated procedures, inadequate staff, low salaries."¹ Citing six years in the House of Delegates as the practical basis for his assertions, Senator Tydings presented a rather disturbing picture of the Maryland legislative process:

As with other legislatures, a flood of local measures and the mandatory adjournment deadline combine to create a frantic end-of-session stampede in Annapolis. In the closing hours, when everyone is watching the clock and legislators are weary after several weeks of day and night sessions, good legislation is frequently killed while "snakes"--tricky bills with hidden and undesirable features--slip by. During the final hours of the 1965 session, the Senate engaged in a spirited debate on the location of a garbage incinerator for the city of Annapolis. Meanwhile, bills to regulate consumer credit and control the distribution of firearms died in the adjournment crush. . .

As a member of the House of Delegates, I was expected to greet constituents, answer mail, study legislation, and initiate bills--all without an office, an assistant, or even a stenographer. In addition to actual days in session, I devoted an average of one-third of my time, year round, to my legislative duties, on a salary of \$1,800 per year . . .

Lobbyists for race tracks, liquor, slot machines, labor, big utilities, and small loan companies are an integral part of the Annapolis scene. When the stakes are high, well-paid lobbyists, earning up to \$30,000 for a single cause, work the corridors with every resource at their command. Bribery is not unheard of. Clarence Mitchell III, an able and honest young delegate from Baltimore City, reported that he was approached by a lobbyist, and offered \$300 to "take a walk" on a bill to ban slot machines.²

¹ Joseph D. Tydings, "The Last Chance for the States," Harper's, March, 1966, p. 73.

² Ibid., pp. 73-74.

Senator Tydings' scenario is embellished with language that creates the image of a governmental den of iniquity. And, while his description may be dramatic and personalized, it must be noted that the Senator was writing on the heels of the 1966 legislative session that had failed to act on the questions of tax reform, selection of judges, and congressional redistricting. These failures occurred less than four years after a statewide savings and loan scandal had resulted in the conviction of the Speaker of the House of Delegates and a former chairman of the House Insurance and Banking Committee, legislative leaders who had successfully blocked regulatory action of Maryland lending institutions.³

On April 2, 1966, one month after the Tydings article appeared in Harper's, a meeting was held in the Senator's office in Washington to discuss legislative modernization in Maryland. The author attended that meeting and subsequently decided, with Tydings' support, to conduct a comprehensive study of the General Assembly, under the auspices of the Issues and Legislative Committee of the Young Democratic Clubs of Maryland. The preliminary objective of the study was a series of recommendations to modernize the organization and procedures of both houses of the Assembly and, because Maryland was preparing for a Constitutional Convention through the research of a

³On February 19, 1963, six individuals, including three Maryland political figures, were indicted for fraudulently misrepresenting the protection provided by the Security Financial Insurance Corp., as an insurer of savings and loan association accounts. The Marylanders indicted included two legislators--A. Gordon Boone, Speaker of the House of Delegates, and Charles F. Culver, former delegate and President of Security Financial. For details of this indictment, see "Six, Including Maryland Officials Indicted in Mail Fraud Charges," The New York Times, February 20, 1963.

preparatory commission,⁴ proposals to assist that commission in drafting a revised Legislative Article.

C. A POLITICAL PARTY STUDY GROUP'S FIRST HEARING

Initially organized as a partisan political group study, the committee received favorable attention in the press at its first public hearings on April 16, 1966. At that meeting, Marvin Mandel, Speaker of the House of Delegates, recommended "reorganization of all House committees as the first step in modernizing the Legislature, and emphasized that the General Assembly members were aware of the deficiencies within the two houses."⁵ He cited the then existing committee structure as a principal deficiency and offered a reorganization plan.

Because only 60 per cent of the members serve on the two major House Committees of Judiciary, and Ways and Means, Mandel suggested that increased participation and specialization could be accomplished by establishing committees on (1) banking and insurance, (2) health and welfare, (3) education, and (4) metropolitan affairs, in addition to the two existing major committees. Appropriate subcommittees could be established for the study of special legislation not germane to the deliberations of an entire committee.

In spite of his carefully outlined plan for committee reorganization, Mandel did not specify what substantive power would be

⁴The preparatory commission was appointed by Governor J. Millard Tawes on June 16, 1965 and was chaired by J. Vernon Eney, Baltimore attorney who became chairman of the Constitutional Convention that convened on September 14, 1967. The Eney Commission issued its report on August 25, 1967.

⁵Speaker Marvin Mandel, quoted in "Legislative Change Asked," The Sun (Baltimore), April 17, 1966.

placed in the hands of these new committees, in relation to the strong authority traditionally given Judiciary, and Ways and Means by the assignment of a greater number of bills than those sent to all other committees combined.⁶ Granting the power of the finance committees of both houses to authorize appropriations, the Speaker was questioned on whether his proposed committees would review bills whose subject matter matched their jurisdiction.

Although the recommendation was not clearly formed at that early stage of the public hearings, the study committee was beginning to develop a modified version of the dual appropriation-authorization system used in the United States Congress. That system incorporates action on programs by the subject matter authorizing committees (e.g., Labor and Education, Armed Services) before funds can be authorized by the appropriations committee, thereby creating an opportunity for study of a proposed governmental program on its merits. This review does not prevent the appropriations committees, which must provide the funds, from examining the program a second time. Normally, in fact, a congressional appropriations committee appropriates less than is authorized, thereby creating some conflict with the authorizing committee, but at the same time developing more thorough examination of legislation than by a single committee's review.⁷

⁶ See Citizens Commission Report, pp. 21-23.

⁷ Richard F. Fenno, The Power of the Purse, *op. cit.* The relationship between the authorization and appropriations committees is discussed generally on pp. 114-116.

Speaker Mandel did not specify how much authority he would grant any newly created committees, but did note that "in a limited session, there was only so much a committee can do."⁸ He granted, however, that year-round committee activity might be one means whereby the time limitation could be counteracted.

Implicit in Mandel's desire not to spell out specific authority to any newly created committees is a cold, hard fact of state legislative life--the Speaker of the House is a powerful office. His political power often derives from his control over procedure and administrative organization. In the Maryland House of Delegates, that control includes the assignment of bills to committees.⁹

The appearance of Speaker Mandel at the first hearing, and his recommendations for committee reorganization were more significant than the study committee realized at that time. In subsequent hearings, it became apparent that through both the legal prerogatives of the speakership and the political personality of this particular officeholder, Mandel was the real power of the Maryland General Assembly.¹⁰

⁸ Transcript, Citizens Commission Hearing, April 16, 1966, p. 4.

⁹ House Rule No. 36(a). See George A. Bell and Jean E. Spencer, The Legislative Process in Maryland (College Park, Md.: Bureau of Governmental Research, 1963). Referral of bills by the presiding officers in both houses is explained on pp. 61-62.

¹⁰ Interview with former Speaker of the House A. Gordon Boone (see footnote 3, supra) on May 4, 1966; he stated that "Marvin was named Speaker because I put him there as Majority Leader. He is clever, learned the rules quickly, and runs the House more softly than I did. But he is clearly in charge. He is a slick operator." The powers of the Speaker are outlined in House Rules 5-8, Rules of the House of Delegates of Maryland (Baltimore: King Brothers, 1966), pp. 4-6.

Although he might have been an adversary of any "reforming" or "investigating" committee, Speaker Mandel cooperated with the study group and began to articulate series of carefully planned positions in support of legislative modernization, followed by skillfully executed decisions to support these positions. One month after his statement in support of a committee reorganization, the Washington Post reported on May 24 that Speaker Mandel had arranged, through the Legislative Council, for "a major revamping of committees in both houses, and of the rule which has permitted a minority to delay or kill bills by offering amendments daily from the floor."¹¹

The power of the Maryland House Speaker is not unique in the state legislative process throughout the United States. In most states, the speaker and other legislative leaders who choose committee members have greater authority than is assigned their counterparts in Congress. Despite the natural political restrictions of party and geographic balance necessary in appointing committee members, the speaker of a state legislature usually has great power to determine the fate of legislation through his choice of committee to review and act upon a bill. In Maryland, a strong speaker will place on certain key committees men who can be depended upon to

¹¹"Maryland Legislators to Revamp Committees," The Washington Post, May 24, 1966. The rule permitting automatic layover of bills is Rule 46. (See testimony of Senate President William James, infra.)

support the party, faction or other interest to which the presiding officer belongs.¹²

D. THE ANNAPOLIS HEARING

The study panel probed more deeply into the nature of the Maryland Legislative process on May 7 in Annapolis when other legislative leaders and the Governor of Maryland testified.¹³ The first witness, Thomas Hunter Lowe, chairman of the House Judiciary Committee, demonstrated a detailed knowledge of General Assembly organization and procedure and, cloaked in homespun language, a sophisticated sense of both the formal and informal power exercised in Maryland's legislative halls and committee rooms.

In his testimony, Lowe described a sharp dichotomy between "formal House procedures and the work of the Judiciary Committee, which along with the Ways and Means Committee, is where the real decisions are made, subject to the approval and knowledge of the speaker and other key leaders."¹⁴ Lowe identified the process by

¹²Interview with Delegate William Houck, chairman of the Maryland House Ways and Means Committee on August 26, 1967, stated that "the Speaker appointed me to Ways and Means because he knew I could be depended upon not to go off the deep end and support bills that would cost the State an excessive amount of money." See Malcolm E. Jewell, The State Legislature: Politics and Practice (New York: Random House, 1962), pp. 77-89, for an analysis of the powers of House Speakers and other State legislative leaders.

¹³Witnesses at the May 7 hearing included Senate President William James, House Judiciary Chairman Thomas Hunter Lowe, Senator James Clark, and then Governor Millard Tawes.

¹⁴Transcript, Citizens Commission Hearing, May 7, 1966 (Citizens Commission on Maryland Government), pp. 2-3.

which he achieved both his formal and informal status in the House hierarchy. Informal authority or, as Lowe described it, "being on the big decisions, is predicated upon my ability to be thoroughly familiar with all the bills that go before Judiciary."¹⁵ He opposed any changes that would diminish the power of his committee, but recommended that a rules committee be established to route bills to the appropriate committee and weed out minor or "bad legislation purely for a delegate's or constituent's personal advantage."¹⁶

The Lowe recommendations for legislative modernization were predicated upon improving the existing bicameral system, but, at the same time, avoiding a readjustment of the structure, organization, and procedures to the extent that existing lines of authority and power would become diffused. The basis of his support for a rules committee was that power already held by an informal group would be given a formal mechanism through which to operate. He identified the informal group as including the House Speaker, Majority and Minority Leaders and key committee chairmen. The function of a rules committee, according to Lowe "is to assign bills to the major committees, skimming the bills to assign only those worthy of their time." As a key committee chairman, Lowe envisioned himself being a member of the Rules Committee--"remember, the Legislature is a highly personal sort of operation where the leaders

¹⁵ Ibid.

¹⁶ Delegate Lowe emphasized, as had Speaker Mandel at the hearing, that a "major function of a legislative leader is to weed out the bad bills, or 'the snakes.'" (Transcript, May 7 hearing, p. 2.)

know one another well and where routine constituent requests cannot be processed by a computer. Representative government is much like the lawyer-client relationship in that it must be personal."¹⁷

It became apparent at the Annapolis hearing that there are almost as many different views on how to modernize a legislature as there are legislators. But, on the subject of committee reorganization, a common thread ran through the testimony: the number of committees must be reduced from approximately 15 to 20 to 5 or 6.

Lowe's recommendations concerning committee reorganization brought into focus the problems of leadership in a state legislative body. While Speaker Mandel supported a reduction in the number of committees, he had not detailed the power and functions he believed necessary to reside in each committee.

While not enumerating committee functions under any new system, Lowe did emphasize several prerequisites necessary for a committee's recommendations on a bill to have credibility with both the House leadership and the full membership: "It is not just a question of how many people you have on a committee, but also the respect the House has for the committee. That respect is determined by two things--the stature of the committee itself and the representation of the points of view from the floor. In other words, with a large committee you must have a fair sampling of all the geographic sectors of the House. A committee must have this sort of representation of differing views to make acceptance of its views assured."¹⁸

¹⁷ Ibid., p. 4.

¹⁸ Ibid., p. 5.

Lowe's criterion of geographic balance no doubt reflected his thinking as a rural legislator who had recently been on the losing side of Maryland's reapportionment battle. But his standards of "committee stature" and "geographic balance" shed light on a common approach of Maryland's legislative leaders to reform: recommendations for modernization of the General Assembly must have acceptability to the leadership before they have utility for the general membership.

Despite a variety of specific recommendations, the consistency with which legislators stressed that modernization proposals must be acceptable to the leadership confirmed two generalizations early in the author's study:

(1) The state legislative process is less sophisticated and more informal than those procedures employed in the management of the United States Congress.¹⁹

(2) Through the testimonies of Speaker Mandel and Delegate Lowe, it became clear that, as part of that informality, decision-making authority is relatively centralized in the state legislative process.

Several months after the testimony of April 16, 1966, Mandel emphasized that the operation of a state legislature was informal

¹⁹ Supra, see Chapter II for a general description of the state legislative process and its comparison with the United States Congress and other branches of state government. Senator Blair Lee III (D., Montgomery County) told the author in a hearing of the Legislative Council on August 10, 1967, that "in organization and procedure, legislators are about where Congress was when the 1946 Legislative Reorganization Act was passed."

and the leadership more centralized because "we have a huge turnover in the membership at the beginning of every four-year term and the inexperience of these new members requires strong direction."²⁰ A striking revelation of the problems facing the Assembly leadership occurred when the author questioned Speaker Mandel about the identity of the new members of the House during a reception given by Governor Spiro T. Agnew for newly elected members of the General Assembly and other State officials at the opening of the 1967 session.

Question: "Marvin, there are many people here. Are most of them legislators?"

Answer: "I wish I knew. Our turnover is over 80 per cent this year, and there are very few of last year's crowd left. It will take a year for these new people just to learn what the details of their committee assignment include. They will need plenty of supervision!"

Implicit in Mandel's response is a fundamental fact that faced Maryland legislative leaders and, of necessity, had to govern their thinking in evaluation of any proposals that would democratize the Legislature, make it "more visible" and diffuse power from the speaker and his immediate associates on the floor to a group of committee chairmen. The Mandel-Lowe observations reveal that the Maryland Legislature is largely non-professional, and that its leadership is a variable, largely dependent on the personal skills of those who occupy the positions of speaker, Senate president, majority and minority leader, chairmen of the Judiciary and Ways and Means Committees and, in addition, a few "influentials" whose power became evident as the modernization study progressed.

²⁰ Interview with Speaker Mandel, November 10, 1966.

Although legislative leadership is a variable, dependent upon the skills of the leader, it has been maintained that "the larger an organization, the more probable is the convergence, if not complete congruence of 'formal' and 'informal' structures of influence and leadership."²¹ From an administrative viewpoint, this observation by David B. Truman is logical, but in the Maryland General Assembly (a relatively small body) the convergence occurs because there is need for stability, professional expertise, and continuity in the face of relatively high rates of membership turnover and the part-time status of Maryland's legislative service.

As he emphasized the need for committee credibility to the House membership, Delegate Lowe also implied that reorganized committees should not become autonomous units that would compete with the leadership itself. When asked if there were some method by which committees could be assigned bills primarily on their subject matter's relationship to the committee's jurisdiction (e.g., education, finance, judiciary), Lowe responded that "this is not accepted procedure and would not be accepted by the public."²²

²¹David B. Truman, The Congressional Party (New York: John Wiley and Sons, 1959), pp. 96-97.

²²Transcript, Citizens Commission Hearing, May 7, 1966, p. 4. See p. 22 of "The Citizens Commission on the General Assembly Reports to the Legislature and the People of Maryland" (the final report of the author's study project) which analyzes the assignment of a series of education bills to the House Ways and Means Committee. Recommendations by the Citizens Commission on Committee Reorganization will be analyzed in Chapter VII.

Although protective of his power position in the General Assembly by avoiding recommendations that would markedly erode that power, Delegate Lowe offered five serious proposals designed to improve operating procedures and improve the status of the Legislature in Maryland government:

1. Increase the salaries of legislators. He said that "\$10,000 per year would not be overpaying them because service in the Legislature is really a full-time job, not just confined to the 70 days we are in Annapolis."²³

2. Increase the length of session from 70 to 90 days and precede each session's introduction of bills by a "prefiling" time period before the beginning of the session wherein bills could be submitted in preliminary form and drafted. Lowe emphasized that such a practice in the spirit of competition would encourage delegates and senators to prepare legislation in advance of the session, with the result that the first two weeks would include analysis of prefiled bills instead of "a mad rush to the hopper on opening day."²⁴

3. Establish a budget committee. Proposed for the first time in the course of the study project's public hearings, this recommendation would be repeated by other legislators with differing proposals for the amount of power that should rest in such a committee. Lowe envisioned a cooperative power relationship with the governor,

²³Ibid., pp. 3-4.

²⁴Ibid., p. 6.

recommending that "the chairman of the budget committee should be the governor's spokesman, because the budget is an executive responsibility."²⁵

4. Retain the "merit" system for appointing committee chairmen. By "merit," Delegate Lowe explained that Maryland legislators advance to committee or floor leadership positions on the basis of their personal attributes, legislative skills, and their ability to adapt to the legislative way of life. Advancement, with seniority as a major criterion, is not as evident in the Maryland Legislature as in the United States Congress.²⁶ Lowe attributed this condition to

²⁵ Ibid. The budget committee ultimately became a key recommendation by the study project, but in different form from that recommended by Delegate Lowe. See Chapter VIII.

²⁶ The time required for advancement to leadership positions after a state legislator enters the Maryland General Assembly is relatively short compared with the time necessary for members of the Maryland Congressional delegation:

From the Maryland Manual (1968 edition), pp. 321-322.

1. Delegate Thomas Hunter Lowe: Entered Maryland House of Delegates 1959. Appointed chairman of House Judiciary Committee 1963 (4 years), Majority Leader 1967 (8 years), p. 321.
2. Senator Harry R. Hughes: Entered the State Senate 1959, Appointed Chairman of Taxation and Fiscal Matters Committee 1962 (3 years), Finance Committee and Majority Leader 1965 (6 years), pp. 301-302.
3. Senator William S. James: Entered State Senate 1955, Elected Senate President in 1963 (8 years), p. 302.

From The Congressional Directory (1967-1968 edition)

1. Rep. Edward A. Garmatz (D., Baltimore City): Entered Congress 1947, appointed Chairman of Merchant Marine and Fisheries Committee 1965 (18 years), p. 33.
2. Rep. George H. Fallon (D., Baltimore City): Entered Congress 1945, appointed Chairman of Public Works Committee 1964 (19 years), p. 33.
3. Rep. Samuel N. Friedel (D., Baltimore City): Entered Congress 1953, appointed Chairman House Committee on Administration 1968 (15 years), p. 33.

the high rate of turnover of state legislators and a corresponding reliance upon a relatively small number of delegates and senators who are recognized early in their careers, given positions on the Legislative Council and assigned to the "better committees." Lowe granted that compatibility with the existing leadership as well as leadership skill would enable a new member to advance rapidly.

5. Provide adequate research staffs for all major committees and adequate administrative staffs for legislators. Although he did not define "adequate" in terms of numbers, Lowe emphasized that reorganized committees would not be effective without at least one or two full-time research assistants. In this connection, he raised the question of cost and, for the first time in the course of the study project's hearings, the issue of the news media receptivity to legislative modernization. The Judiciary Chairman believed it possible to sell the greater cost attached to a program of internal legislative improvements to the public, but expressed reservations about whether the news media would accept any modernization program that included a salary increase or additional administrative assistance. He recommended that any report issued by the study group be presented as a package of total reorganization rather than just recommendations for pay increases or administrative assistance.

The role of the press in the legislative system is a significant one and, in its modernization program for the Maryland General Assembly, the study committee was to encounter the news media both as friend and foe: friend, in supporting change that exposed faulty

internal legislative operations, but less receptive when the modernizing recommendation would include salary increments or administrative assistance for the individual delegate or senator.²⁷ It became increasingly apparent that Lowe was correct in viewing reorganization as a total program with obligations placed upon the legislator in return for benefits received by him. An example of such an obligation would include attendance at committee meetings between sessions under a reorganized committee structure.

In discussing the news media, Lowe did not raise an issue unique to Maryland. In some states, the legislature and the press have approached open conflict as in Tennessee when the legislature barred the reporters of a particular newspaper from the legislative halls. (A court readmitted them.) Duane Lockard attributes latent or open conflict between legislature and press to "an ambiguous set of relationships--mutual suspicion and mutual dependence"²⁸--where, on the one hand, the reporter needs news and the legislator profits by publicity while, on the other, the legislator may want to keep some kinds of news from the press and the reporter wants as much access as possible.

In contrast to Delegate Lowe's analysis of the Legislature in terms of power relationships and maintaining the leadership's authority, Senate President William S. James, a scholarly and somewhat remote figure, emphasized rules, research, and legislative

²⁷In the November 1966 election, The Sun (Baltimore) opposed a constitutional amendment permitting state legislators to set their own salaries. The amendment was defeated.

²⁸Duane Lockard, State Legislatures in American Politics, ed. Alexander Heard (American Assembly, Columbia University, 1966), p. 108.

routine in his testimony at the May 7 hearing. His primary attack on legislative inefficiency centered on the Assembly rules that, in his judgment, hamper decisive action on bills once they are out of committee and on the floor. He specifically identified Rule 46 that provides "whenever a bill or resolution is reported with amendments by a committee, or whenever amendments are offered from the floor of the House during the first 65 legislative days of a regular session of the General Assembly, consideration of the bill or resolution, and of the amendments, shall, upon the request of any member supported by at least four other members lie over for one day..."²⁹

In emphasizing the delay tactics that can be employed under Rule 46, Senator James noted that in the House, amendments can be offered until the last six days of the session, thereby increasing the chances of inaction on a bill, to say nothing of defeat. Even the Senate rules that permit "laying over" a bill only once do not prevent introduction of amendments on the last day, resulting in inaction until the following session.

Senator James' concern about the power of certain Senate and House rules parallels that of Duane Lockard, who notes that "the rules of procedure and constitutional structure of legislature grant an advantage to the fellow who does not want action taken. The very fact that bills must pass both houses in identical form--that, in short, the bill must go over two hurdles and not one--is a source

²⁹ Rule 46, Rules of the House of Delegates of Maryland, 1966, p. 26. (Senate Rules, p. 25).

of power . . . The rules of a legislature are utterly incomprehensible to many a fledgling legislator. This is an asset to the member who learns how to play the rules to his advantage."³⁰

Both the Maryland Senate and House have published editions of their respective rules--the formal, structural, procedural details are readily available in that written form. But it is their operational characteristics and seemingly innocuous language that are difficult to discern without seeing their effect in actual practice. The way power is exercised in parliamentary bodies is elusive, whereas the formal procedures are usually concise, objective, and available in convenient written form.³¹

Lockard has also noted that the rules may also offer the means to an individual or a small group of legislators to override the will of the majority. Where committees are not required to report legislation back to the floor, especially during limited sessions, the opportunity exists to kill bills by pigeon-holing. In Maryland's 70-day session, a bill or resolution referred to a committee after the thirtieth day may be petitioned out when it has been in committee

³⁰Duane Lockard, The Politics of State and Local Government (New York: The Macmillan Company, 1966), pp. 293-294.

³¹Interview with Delegate Leonard Jacobson (D., Baltimore County, 2nd District) revealed that House Bill 956, Baltimore County Court Reform Bill, was defeated during the 1967 legislative session by the "laying over" provision of House Rule 46. A liberal, Jacobson was opposed to that bill sponsored by the conservative Democratic organization and found "Rule 46 useful in defeating that measure, even though it is normally thought of as a rule for obstructionists in the Legislature."

for more than 15 days.³² If petition is attempted, 35 days at the most are available for floor decision. If no organized petition is arranged, then the bill dies in committee, and, according to Senator James, "the last month of a session is sufficiently hectic to make difficult an organized floor effort to pry a bill out of committee. We have enough trouble completing action on the governor's budget and essential bills, and still adjourn on time."³³

Senator James placed research on a high priority in analyzing legislative modernization. At the time of his May 1966 testimony, the Legislative Reference Service, the research arm of the General Assembly, employed 12 staff members. The director, assistant director, two legislative analysts, one research analyst, and seven clerks provided professional assistance for the 186 members of the House and Senate and the 30 members of the Legislative Council. Even though extra bill drafters were added to the staff during the 1966 session, the inadequacy of the system was illustrated by the

³²Rule 44(b), Rules of the Maryland House of Delegates, 1966, p. 25. See Howard E. Shuman, Legislative Behavior, eds., Wahlke and Eulau (Free Press of Glencoe, 1959), pp. 84-95. An analysis of how five rules, if applied, can literally bring the United States Senate business to a standstill: Rule 23 (2) and (3)--the filibuster; Rule 22 (1) which makes tabling motion not debatable; Rule 26 which requires that all reports and motions to discharge a committee of a bill must "lie over" one legislative day; Rule 40 which requires on day's notice to suspend the rules; and Rule 7 requiring that a petition to discharge a committee be filed in the so-called morning hour (yet the same Rule 7 contains a provision permitting the verbatim reading of the Journal and other reports to delay the discharge petition.)

³³Transcript, Citizens Commission Hearing, May 7, 1966, p. 10.

fact that, within about 40 days, 8 to 12 people must research and prepare almost 2,300 individual pieces of legislation. That figure did not include the numerous bills that never reach the floor and the innumerable amendments that are voted upon.

Similar problems beset the State Fiscal Research Bureau, the budgetary research agency for the Legislature. In 1966, five administrative analysts, three clerical assistants, and the director were expected to provide financial research for the Legislative Council's Taxation and Fiscal Matters committee, the Senate Finance Committee, and the House Ways and Means Committees.

Senator James maintained that the heart of an adequate legislative research program is "bill analysis service whereby the analyst is employed principally to draft and study the bills assigned to a major committee under a reorganized system."³⁴ Although the author and his associates did not realize the full impact of Senator James' suggestion that research assistants be assigned specifically to one committee instead of operating in a diversified work program, it became clear as later hearings were held that what he was suggesting was committee specialization during the interim period of nine months between regular sessions.

³⁴Ibid., p. 26. It is appropriate to note that, despite his support of relatively independent major committees in the May 1966 hearings, Senator James would subsequently express reservations about any sharp reduction in the power of the Legislative Council to coordinate the activities and policy decisions of these committees, particularly during the interim period between legislative sessions. As President of the Senate, Mr. James expressed concern to the author on a number of occasions that "the importance of the Senate, in relation to the House, might be reduced under a joint committee operation between sessions." See Chapter XI.

In a subsequent interview to clarify his initial generalization about "a major committee under a reorganized system," Senator James expressed loyalty to the Legislative Council as an interim study and research arm of the Assembly. But he did not object to adjusting the role of the Council to that of an "executive and coordinating committee to direct the program of the standing committees between sessions. The virtue of such an adjustment could be that more members would feel that they had an important part to play in this interim work, whereas now, there is some picking and choosing."³⁵

In addition to recommending research assistance, Senator James recommended reduction of the number of Senate committees from 20 to 3: a 20-man finance committee and the other 2, judicial proceedings and economic affairs, to be divided equally among the remaining 24 senators. He recommended the use of appropriate subcommittees to give each member substantive duties. The Senate President concurred with Speaker Mandel's recommendation of five or six major House committees, but he indicated that he would not make specific suggestions, because "House committee designations are the province of the Speaker."³⁶

Senator James concluded his testimony by recommending that the study committee examine the feasibility of automation, specifically

³⁵ Interview with Senator William James, November 10, 1966.

³⁶ Transcript, Citizens Commission Hearing May 7, 1966, pp. 11-12.

(1) statutory information retrieval to aid in the drafting of legislation and (2) bill status reporting to assist legislators in determining the progress of a piece of legislation as it moves from "first reader" to committee and back to the floor for "second and third readers."

The Governor of Maryland, J. Millard Tawes, testified at the May 7 hearing, and, as expected, executive-legislative relations was the substance of his testimony. An organization politician who rose through the ranks of Maryland Democratic party from court clerk to governor and whose Administration was to become a principal issue in the 1966 primary election, Governor Tawes had not served in the Legislature. But this lack of actual service by no means removed him from contact as governor with the Senate and House that met one floor below his office in the historic Maryland statehouse.

In Maryland, formal and informal powers that rest with the governor can make him a dominant figure in the State's legislative system. The governor's power to formally approve or veto legislation begins after the Legislature has passed a bill, sealed it with the Great Seal of Maryland, and presented it to him. Every bill with the exception of the budget bill and constitutional amendments must be sent to the governor for his consideration and action. Once a bill has officially been presented to the governor, he may act upon it in three ways: he may approve and sign it; he may take no action at all; or he may veto it. However, his action need not be the final step in the legislative process because a bill may become

law not only by his signature or by his failure to act within six days while the Legislature is in session, but it may become law by being passed over his veto.³⁷

The most important formal power that resides in the office of governor is his authority to present, not later than ten days after the opening of the Legislature, "the budget for the next ensuing fiscal year . . . Each budget shall embrace an estimate of all appropriations in such form and detail as the governor shall determine or as may be prescribed by law."³⁸

But even more than constitutional authority and legal prerogatives, the dynamics of executive-legislative relations make the governor an integral part of Maryland's legislative process and the State's chief legislator. The governor's opinions on issues, as expressed in his annual message to the General Assembly, other speeches and decisions, receive wide circulation and have great influence on the Maryland political process. His power of initiative in presenting the budget, and the corresponding requirement that the General Assembly shall act on the budget no later than three days before the close of the session,³⁹ place the governor at the center of the legislative process. Policy decisions are affected by the ever-present threat of the gubernatorial veto. Many

³⁷ See George A. Bell and Jean E. Spencer, The Legislative Process in Maryland, pp. 54-74, for an outline of the formal powers of the Governor of Maryland and their relationship to the legislative branch.

³⁸ Maryland, Constitution, Art. 52, Sec. 3-4, with Amendments to January 1, 1965 (Published by the Secretary of the State of Maryland), pp. 30-31.

³⁹ Ibid., Art. 52, Sec. 10, p. 33.

bills come before the governor for his action after a session's end, and a veto in such cases has the effect of postponing final passage for nearly a year, assuming the Legislature eventually were to override the veto by a three-fifths vote.

The General Assembly expects and receives a legislative program from the governor. Even though the executive branch may be Republican in a traditionally Democratic-controlled Legislature, close liaison with the speaker, senate president, floor leaders, and committee chairmen is essential.⁴⁰

Finally, the constitutional and political power that may exercise as much influence with members of the General Assembly as any the governor possesses is the power of appointment.⁴¹ The governor is

⁴⁰ An interesting example of the governor's need for close contact with the General Assembly was an observation made by Republican Governor Spiro T. Agnew at a meeting on March 29, 1968. He expressed concern that his legislative liaison staff members did not know sufficiently the inner workings of the Legislature and that because of this lack of knowledge, he was not as successful in getting his 1968 program across as he had been in 1967 during the so-called "honeymoon" period after the 1966 election. He emphasized that he considered his "working relationship with the Legislature the most important political part of my job."

⁴¹ See Herbert Jacob and Kenneth N. Vines, Politics in the American States (Boston: Little, Brown and Company, 1965), pp. 220-229. In a general power index of the formal powers of the governors of the fifty states, Maryland ranks eighth, immediately following the large states of New York, Illinois, New Jersey, Pennsylvania, Virginia, Washington, and California. The combined power index includes appointive, budget, tenure, and veto. Maryland's governor ranks third in the nation in appointive powers (p. 222). The "green bag" in Maryland is sufficiently pervasive that when the Citizens Commission on the General Assembly held a hearing on October 14, 1966 to receive testimony from gubernatorial candidate George P. Mahoney, the seven-times seeker of statewide office concluded his proposals for legislative modernization by suggesting that Commission members visit him in Annapolis to discuss appointments. After the hearing, a politically oriented Commission member humorously noted, "When he said that, I could hear the green bag opening up!"

empowered to make nearly 800 appointments to State and county offices every biennium. In off-year sessions of the Legislature, he sends to the Senate the traditional "green bag," so named from the color of the brief case containing from 500 to 600 appointments to be ratified by majority vote of the Senate. It has been said that "in a one-party state, where the governor lacks the natural forces of party unity, patronage may become the crucial factor in securing his legislative program."⁴²

With this backdrop of executive power and potential dominance of the Maryland legislative process, Governor Tawes presented a politically astute but relatively cautious appraisal of the need for legislative modernization in Maryland. He described his assistants' duties in terms of liaison with a particular executive agency. Those duties become legislative in nature when the General Assembly goes into session, and bills introduced become "the assignment" of a particular staff member, depending upon which agency is affected by the appropriate bill.

Governor Tawes reported that legislative liaison in his administration was not a formalized, rigid arrangement, although he had begun the practice of weekly meetings with the legislative leaders to formulate and analyze policy. He emphasized, however, that the principal purpose of those sessions was to "get across the point of view of the administration."⁴³

⁴²Malcolm E. Jewell, The State Legislature: Politics and Practice (New York: Random House, 1963), p. 120. See Coleman B. Ransome, The Office of Governor in the South (Bureau of Public Administration, University of Alabama, 1951), pp. 88-96.

⁴³Transcript, Citizens Commission Hearing May 7, 1966, p. 17.

Although legislatures are critical obstacles through which appropriation and revenue measures must pass and are still battlegrounds over the objectives of public policy, such devices as the Tawes legislative meetings indicate the increased participation of a state governor in legislative decision making, in order to minimize Assembly opposition or lack of communication. Jacob and Vines note that "sophisticated law-makers are aware of their function as arbiters rather than initiators of public policy. As one of them put it: 'We're the policy-making body of the state government, and basically we should give leadership necessary to meet the problems the state faces. But in practice, it comes from the executive branch.'"⁴⁴

The leadership that comes from the executive branch is often difficult to identify. It is difficult at times in Maryland to identify just what characterizes an administration bill. Many times bills introduced by individual members arise out of joint executive-legislative study groups and are identified with the governor. In 1968, there were approximately 50 bills either sponsored by or closely identified with the Agnew Administration. Approximately one-half of these passed, according to Governor Agnew's legislative officer.⁴⁵ When the governor and Assembly majority are of the same

⁴⁴Jacob and Vines, *op. cit.*, pp. 200-201. Legislator's quotation from John C. Wahlkes et al., The Legislative System (New York: John Wiley and Sons, 1962), p. 255.

⁴⁵Interview with David J. Markey, Legislative Officer for Governor Spiro T. Agnew, August 8, 1968. See Appendix for analysis of major legislation either developed and sponsored by the Administration, or developed jointly by the Administration and Legislature. It is clear from the content of these bills that the Governor participated in some of the most significant legislation introduced in the 1968 session, both from a financial and program standpoint.

party, administration bills can usually be identified as those introduced by the speaker (or Senate president) and the minority leader.⁴⁵

Governor Tawes was careful to avoid the impression of a chief executive who derives political satisfaction from the exercise of power, and, in fact, his methods of leadership and style would do little to strengthen that impression. It was clear, however, that the governor was quite familiar with the political skills required to effectively represent the executive branch in the General Assembly. In response to the question on how the governor participates in the selection of a house speaker or majority floor leader, Tawes responded: "It is done in cooperation. There is no set procedure; it is done by discussion, by sitting down and finding the right man."⁴⁷ The implication was clear that, at least when the governor and the Legislature's majority are of the same party in Maryland, the chief executive does inject his point of view in the selection of General Assembly leaders.⁴⁸

In addition to his carefully presented and politically guarded analysis of legislative liaison, Governor Tawes became the third major witness to put himself on record for reduction of the number of

⁴⁶ Ibid.

⁴⁷ Transcript, Citizens Commission Hearing, May 7, 1966, p. 18.

⁴⁸ Interview with A. Gordon Boone, former Speaker of the Maryland House of Delegates, on April 8, 1968, revealed that "while I had actively sought the speakership, Governor Tawes' endorsement assured my selection." According to Boone, "If the governor is a member of the minority party, the majority party picks its legislative leaders in caucus."

committees, along the lines suggested by Speaker Mandel. He stated that "a budget committee is 'a must' because the Legislature is now almost unable procedurally to do any more than react to agency requests."⁴⁹ In no way, however, did Tawes imply that the gubernatorial initiative to prepare and present the budget should be altered, either constitutionally or in actual practice. While he did not have specific proposals on how the Legislature should participate in the budget beyond the establishment of a budget committee, he emphasized that such a committee would at least provide some sort of continuing study of executive spending proposals.

The Governor supported the recommendations of the Governor's Committee on Executive and Legislative Compensation for a legislative salary of \$6,500 and "did not oppose" lengthening the annual session to 90 days.⁵⁰ In reference to the time limitation of the annual session, the Governor was questioned closely concerning his role in the Cooper-Hughes tax bill which was defeated in the last-minute legislative "logjam" by two votes in the House of Delegates. The Governor thought that an extra 20 days for the session might have saved the bill, but warned that "procedural and mechanical changes in the Assembly will not automatically insure that so-called 'desirable' legislation will pass."⁵¹ He also noted that the press

⁴⁹ Transcript, Citizens Commission Hearing, May 7, 1966, p. 18.

⁵⁰ The Committee on Executive and Legislative Compensation, chaired by Charles P. Crane, issued its report on March 22, 1966. See pp. 9-14 of that report for analysis of legislature salaries.

⁵¹ Ibid.

had been unfair in its characterization of the 1966 Assembly record by classifying the session a failure because of the defeat of one bill.⁵²

Governor Tawes concluded his testimony by raising an issue that had not been brought sharply into focus by any of the previous witnesses--the preponderance of local legislation that must be decided upon by the Assembly each year. Strictly defined, public local law consists of legislation on purely local problems, including amendments to the code of public local laws in effect for each county and Baltimore City. Examples include laws authorizing a local bond issue, conveying property from a county to a city, and defining the powers of a county agency.

Some titles of local bills introduced in the 1968 session show their restrictive character: HB77--Alcoholic Beverages, Dorchester County; HR1--Big Glen Burnie Carnival Week; HB494--Animals Cecil County; HB838--Flag and Seal, Kent County; HB 871--Bingo, Worchester County; HB 929--Dogs, Frederick County, SB 329--Dog Racing, Calvert County; and HB 573--Tax Collector, Salary, Allegheny County.⁵³

⁵²See The Evening Sun (Baltimore), editorial, "The Record-Again," April 14, 1966, which criticizes the Tawes analysis of the 1966 session. The editorial notes that "there is at least a minimal hope that reapportionment will cause the Legislature to focus with more determination on the knottiest problems. . . ."

⁵³Files of the Legislative Reference Service and the records of the Clerks of the Maryland House and Senate, examined by the author on August 9, 1968.

Local bills in the House are introduced by a delegate or the delegation of the affected county; in the Senate, introduction is by a senator from the appropriate county. After referral to a select rather than a standing committee, the practice in both houses is for select committee members from counties not affected by the bill to accede to the wishes of the members whose county is affected. Only if a local bill is adjudged to have statewide implications, will it be referred to a standing committee. For example, all bills on alcoholic beverage control and revenue are so referred in both houses.⁵⁴

Even though introduced in the General Assembly, local bills reflect the desires of a Board of County Commissioners, a county executive, county councilmen, local political officials, or individuals who are promoting a specific project. This feature of local legislation disturbed Governor Tawes and caused him to recommend the adoption of some form of home rule in every Maryland county. The Governor noted that, although he gets many requests to veto local bills, he usually signs all such measures unless there is a clear indication of unconstitutionality. His reason: "It is politically dangerous to interfere with strictly local matters."⁵⁵

⁵⁴ See Bell and Spencer, The Legislative Process in Maryland, op. cit., p. 5 and pp. 84-85 for analysis of local legislation in the Maryland General Assembly.

⁵⁵ Transcript, Citizens Commission Hearing, May 7, 1966, p. 20. For more detailed information on home rule in Maryland, see November 1968 report on that subject, prepared by The Citizens Commission on Maryland Government.

The May 7 hearing concluded with a warning by Senator James Clark (D., Howard County) that "the major weakness in the present organization and operations of the Maryland Legislature is an atmosphere where the individual legislator cannot be independent, often cannot act solely on the merits of legislation."⁵⁶ Clark, a farmer-businessman, maintained that improved salaries and a meaningful conflicts-of-interest bill would create the conditions necessary for more independence on the part of the individual legislator. Granting that he was speaking somewhat idealistically, Clark identified "the ability to be elected on his own, without going through the restrictive 'boss' or 'ticket' system" as the most important criterion of legislative independence in Maryland.

In relative contrast to Governor Tawes' view that gubernatorial power could reasonably be enlarged, particularly the authority to reorganize agencies within the executive branch, Senator Clark concluded his testimony with the view that executive influence over legislators is too great. He recommended that this pressure could be lessened by (1) a stronger committee system that would analyze the governor's budget and (2) sufficiently high legislative salaries to prevent undue executive influence in patronage matters.

E. THE CAPITOL HILL HEARING

Armed with more insight into Maryland's legislative process after its first two hearings, the Citizens Commission on the General

⁵⁶Ibid., pp. 22-23.

Assembly⁵⁷ held a meeting on May 25, 1966, with three members of the State's Congressional delegation and the two United States senators, all of whom had served as members of the General Assembly earlier in their careers. Testifying in the United States Capitol's ornate Senate Caucus Room on May 25, the five national legislators put themselves on record for extensive reorganization of the General Assembly.⁵⁸

A dichotomy became apparent between the views expressed by Maryland state legislators and the members of Congress who had once served in the General Assembly and were able to compare its operations and procedures with those employed in the United States Senate and House of Representatives. At the time they testified, the national legislators clearly were less inhibited by the constraints of having once been participants in the state legislative system. Their recommendations, while not necessarily evincing an awareness of the immediate pressures within the General Assembly, consisted largely of more far-reaching proposals than had been offered by some of the State legislative leaders. It became clear that the Congressional experience had had an effect on the thinking

⁵⁷On May 25 (the day of the Capitol Hill Hearing), the study project was deliberately named the Citizens Commission on the General Assembly in order to encourage the Young Republicans of Maryland to join with the Young Democrats, thereby generating broad-based, bipartisan support for legislative modernization. This decision was followed by formation of a bipartisan commission one month after the Capitol Hill Hearing. The broadened membership and bipartisan complexion of the Commission will be examined subsequently in Chapter VIII as part of the tactics of the "politics of reform."

⁵⁸See "Assembly Needs Overhaul, Congressional Group Says," The Sun (Baltimore), May 26, 1966.

of the former delegates and senators since their departures from Annapolis. Although their recommendations were based ostensibly on their state legislative experience, it was evident that comparisons were being made with the more sophisticated operations and procedures of the Congress--particularly those that seemed applicable to the General Assembly.

The observations of several witnesses reflected their frustrations with the state legislative process.

Senator Daniel B. Brewster, eight years a member of the House of Delegates, concerning adequate staff and research assistance: "To illustrate one of the worst problems in the Legislature, I have a reasonably large staff as a United States Senator, with at least one or two lawyers and some researchers. I serve on three major committees, each with professional and technical staff paid all year-round. Any question on any point can be answered by my own staff, committee staff, and the Library of Congress. The House of Delegates in Annapolis? No, you cannot get enough information."⁵⁹

Senator Joseph D. Tydings, six years a member of the House of Delegates, concerning salaries and public confidence: "I am convinced the Legislature must abolish its hidden per diem payments and other benefits. There is no greater way to weaken public confidence in state government. A delegate may get \$25 or \$30 for each meeting he attends and simply go to the meeting to collect the money--that is most unfair. When I was in the Legislature, I was

⁵⁹ Transcript, Citizens Commission on the General Assembly, May 25, 1966 Hearing, Washington, D.C., pp. 13-14.

never appointed to the so-called 'paying' Legislative Council committees. However, I was chairman of a special study committee that recodified for over three years the Maryland insurance code. We must have had over 250 meetings in that three years. Most of them over which I presided lasted all day. None of us on the group ever received any compensation. The boys on the Legislative Council went to two or three meetings a day in Annapolis, got sometimes as much as \$100 for 'dropping in.' This is the kind of thing that must be eliminated--all the solid work a legislator may do in committee is undermined by this kind of extra payment. Although the total income the Maryland delegates get is not much over \$4,000, the fact that only \$2,400 is visible under the Constitution creates distrust. I think that a state legislator ought to be paid from \$6,500 to \$10,000 a year. I would recommend \$10,000 if I thought it would pass. I think it would save the State millions and millions of dollars to get better qualified men."⁶⁰

Congressman Charles Mathias (R., Montgomery and Frederick Counties), eight years a member of the House of Delegates, concerning legislative oversight, sectional rivalries and rights of minorities in the legislature: "I would be lacking in candor if I thought there were no reason for concern in Maryland and perhaps in the country about the vigor and interest in local and state politics. I think the attention of your study commission may help to enlarge the importance of the Legislature, make people realize the influence

⁶⁰Ibid., pp. 34-35.

a state assembly has on the lives of individuals and right here in the U.S. Capitol . . . To me this is a political question, not just something where you evolve a formula to resolve. . . .

"I don't recall much correlation between the committee system in Annapolis and the executive branch. You have to develop a certain amount of legislative oversight over specific functions of the governor. Just before this hearing, I attended a conference at Secretary Weaver's Urban Development Office--he is in the critical position of having to deal with certain important committees of Congress. Even a strengthening of our U. S. House operations wouldn't hurt here--a Committee on Urban Affairs could coordinate the legislative part of that work, and Weaver could concentrate his work primarily on this one committee. In the Maryland Legislature, oversight is almost impossible because there is a proliferation of small, somewhat meaningless committees.⁶¹

"Maryland's Legislature is more of a reflection of sectional, geographical tensions than party divisions. These sectional tensions increased the problems we examined, the Eastern Shore against the City, Western Maryland against Southern Maryland, this kind of thing. With reapportionment, there may be less of this sort of thing. I still think it essential to protect the rights of the minority . . . At the time I was in the Legislature, the Republican party was at its lowest ebb since the Civil War. We had seven members in the House and three in the Senate. They used to kid us

⁶¹Ibid., pp. 41-43.

about 'having our caucuses in a phone booth.' However, we generally had the right to state the minority position. This right must be protected and strengthened in the legislative rules."⁶²

F. HEARING, DR. CARL EVERSTINE, DIRECTOR OF THE
LEGISLATIVE REFERENCE SERVICE

A study in contrast soon developed from the Capitol Hill hearing, from the testimony given by Dr. Carl Everstine, Director of the General Assembly's Legislative Reference Service. As analyzed in Chapter XI, Dr. Everstine would become an influential, even though background figure during the implementation phase of the Citizens Commission report, primarily because of his traditionalist orientation about the state legislative process and a desire to protect the power of his agency against the decentralization of its research functions that would probably accompany committee reorganization.

Dr. Everstine began his testimony by recommending that the Commission report its findings to the Legislative Council instead of issuing a public report, apparently in an effort to get the Legislature to respond initially to reform proposals through the Council instead of the membership at large. It would become evident to the Commission that Everstine exercised great influence over the Council, primarily because the Reference Service functioned as a research agency for that interim body of the Assembly. Although bill analysts worked for individual committees during the session, the continuity

⁶²Ibid., p. 46.

of the work done by Everstine's agency was strengthened by its supportive staff work for the Council.⁶³

The influence of the Reference Service over the Council can be attributed to three factors, analyzed in Chapter X (in reference to the recommendations of the Eagleton Institute) and Chapters XII and XIII (analysis of the Legislative Council hearings on implementing committee reorganization recommendations of Eagleton and the Citizens Commission). These factors are:

1) The "expertise" that a government agency possesses in relation to the elected office-holders, usually "generalists," whom it serves. This expertise is particularly apparent in the state legislative process where assemblymen usually serve as part-time public officials and are together only during formal sessions.

2) The interrelationship between the research staff of Everstine's agency and members of the Legislative Council. Both the policymaking body and its supportive agency have undergone a "socialization process" that appears to create a desire on the part of both groups to reenforce one another when making decisions.

3) The simple fact that Dr. Everstine has directed research functions for over thirty years, thereby having an established power base that has been strengthened through tenure as legislative leaders have come and gone in the Maryland General Assembly.

⁶³See Chapter X for interviews with Dr. Alan Rosenthal and Mr. Larry Margolis concerning the operations of the Legislative Reference Services and its influence over the General Assembly. Chapter X also examines the recommendations of the Eagleton Institute in support of a decentralization of the operations of the Reference Service. Eagleton's recommendations in this area were more detailed than those of the Citizens Commission.

The essence of Everstine's approach to legislative modernization is shown by his observation that "the slowness of our operations in the Legislature is really a good thing--it gives public opinion a time to crystallize. I just don't think that the General Assembly has any particularly bad faults. As a matter of philosophy, we may be better off sticking to some of the old and perhaps inefficient procedures, such as three readings, two houses, ceremonial traditions."⁶⁴

His response was essentially "I don't think it will work" to recommendations for pre-filing of bills, additional staff for research, and a system of committees functioning between sessions of the Legislature. The basis for this opinion appeared to be rooted in the ethos of the "citizen legislator" who operates in his government capacity part-time and, when he is not engaged in legislative duties, earns a living in private business or a profession. Everstine expressed concern that "a legislative bureaucracy would emerge where the sole objective of the Assembly members would be to perpetuate their jobs."⁶⁵ According to Everstine, any major steps to modernize the legislative operation, including augmentation of research support, would increase reliance of members and staff on the care of government.

And the Commission heard sharp criticism of the press in the latter's reporting activities of the General Assembly. The Reference

⁶⁴Transcript, Citizens Commission Hearing, June 9, 1966, p. 2.

⁶⁵Ibid., p. 4.

Service Director reported that "some editorial staff members of the Sunpapers have admitted to me, off the record, that they have a bias against the legislative process."

G. CANDIDATES FOR GOVERNOR TESTIFY

As noted in Chapters III and IV, Maryland Democrats were bitterly divided along ideological lines, in addition to feeling that it was politically expedient to dissociate themselves from the Tawes Administration. The opportunity was therefore ripe for the Citizens Commission to get all the gubernatorial candidates to agree publicly on record on the need for legislative modernization. Therefore, Maryland citizens witnessed a relatively unusual process during the partisan political months of July-October 1966: all candidates for the State's highest political office agreeing, in public hearings sponsored by the Commission, to support and, where possible, as Maryland's Chief Executive, to press for reform of the General Assembly.

The major press accounts of the testimony of Democratic and Republican party candidates for governor are contained in Appendix J.⁶⁶ Basically, most of these candidates made progressive recommendations for internal reorganization, including reduction in the number of committees, higher salaries, more effective legislative oversight of the executive budget, and improved research

⁶⁶For purposes and objectives of the Citizens Commission during the early months of the 1966 primary campaigns in Maryland, see "Wills Committee: Legislature Streamlining Studied by Commission on the General Assembly," feature article, The Evening Sun (Baltimore), July 6, 1966. (See Appendix J.)

staffing and facilities. Candidates who testified before the Commission were Republican Agnew; independent candidate Hyman Pressman, Baltimore City Comptroller; and Democratic contenders Thomas B. Finan, then attorney general for the State; Clarence Miles, civic leader and general counsel for the Martin-Marietta Corporation; Carlton Sickles, then congressman-at-large for Maryland; and, in his only appearance before an issues forum during the election, Democratic nominee George P. Mahoney.

The program of the Citizens Commission became sufficiently attractive to Republic candidate Agnew when he was urging constitutional and administration reform of State Government in Maryland, that he employed a standard sentence, "We must continue to follow the examples set for us by the Curlett and Wills Commission reports."⁶⁷

A major "coup" of the Citizens Commission was getting Mr. Mahoney to testify at a hearing, which constituted his only appearance at any meeting during the campaign to discuss substantive issues. The Mahoney appearance was preceded by the Commission's only public brush with partisan politics of the 1966 campaign. A letter by the Commission chairman drew criticism from Democratic party stalwarts who were publicly supporting Mahoney, but served to attract attention to the fact that Mahoney had been the only candidate who had failed to make his views specifically known on the

⁶⁷ From notes taken of Republican nominee Agnew's speeches to the League of Women Voters over statewide television and the Baltimore Chamber of Commerce. As noted in Chapter IV, the Curlett Commission was created by Governor Tawes to study reorganization of the Executive Branch of Maryland Government.

details of legislative reorganization. As reported in the Sun on September 21, 1966:

MAHONEY'S ASSEMBLY PLAN ASKED

By Charles V. Flowers

An unofficial nonpartisan study group is trying to find out whether George P. Mahoney has any thoughts about modernizing the Legislature.

George S. Wills, chairman of the Commission on the General Assembly, said yesterday he wrote to Mr. Mahoney asking him to testify before the group. Mr. Mahoney is the apparent Democratic nominee for governor, though the official results of the close primary election have not been announced.

"It is time to look beyond the emotion-charged open-occupancy issue on which your views are already known," Mr. Wills said in the letter. "Maryland's citizens expect opinions on the complicated and pressing questions of tax reform, State Government reorganization, economic development and State relations with the Federal Government."

Mr. Mahoney opposes open-housing legislation.

Broad Range

The study commission wants Mr. Mahoney to comment on House and Senate organization, committee operations, finance and legislative oversight of the executive department budget, and professional staffing.

In his letter to Mr. Mahoney, Mr. Wills said:

"Mr. Spiro T. Agnew, the Republican candidate, and your major Democratic primary opponents have already gone on record for improvements in the complex operations of the General Assembly. The commission believes a more effective State Government necessitates your going on record before the November election.

"The commission regrets not having invited you to testify during the primary campaign. However, your acceptance of invitations to testify at several issues forums, followed by a failure to appear, gave us little hope that your views on legislative modernization could be examined."

Mr. Wills said he thought Mr. Mahoney has an "obligation to the people of Maryland" to accept the invitation to testify.

The Commission on the General Assembly was originally organized by the Young Democratic Clubs of Maryland but now includes Young Republicans and a panel of interested citizens in its membership.

Publication Expected

Mr. Wills's group expects to publish its recommendations for modernization of the General Assembly this fall. Included in the report will be proposals for seven year-round committees staffed jointly by members of the House and Senate, longer sessions than under the present limitation of 70 days annually, increased salaries of legislators from \$2,500 to \$10,000, and enlarged technical staffs.

Besides getting the views of all the major gubernatorial candidates except Mr. Mahoney, the commission has taken testimony from Maryland's United States Senators, Daniel B. Brewster and Joseph D. Tydings, and from William James, president of the State Senate, and Marvin Mandel, Speaker of the House.

The results of the hearing were not startling, primarily because Mahoney had been briefed by a former delegate prior to the hearing, in order that he might evince some knowledge of the Maryland legislative process. Former House Speaker A. Gordon Boone later reported that "George remembered most everything I told him, but he apparently forgot the salary figure of \$5,000 I suggested-- or else, in a quick effort to get political support from Democratic candidates for the Assembly, recommended \$10,000."⁶⁸

The public hearing phase of the Citizens Commission ended with the appearance of the gubernatorial candidates during the 1966 campaign. Just prior to the report-drafting phase, the Commission sponsored a dinner for legislative leaders and officials of the Citizens Conference on State Legislatures. At that occasion, House Speaker Mandel offered a suggestion that would prove to be a helpful

⁶⁸ Interview with A. Gordon Boone, former Speaker of the Maryland House of Delegates, September 23, 1966. See newspaper reports of gubernatorial candidates' testimony before the Commission, particularly the interesting accounts and editorial commentary on the Mahoney appearance (Appendix J).

guideline for the ensuing months of report preparation and implementation: "Your record of public hearings has been constructive and informative. Do everything possible to make your report responsible. If you do not, then all your efforts to date will have been wasted time."⁶⁹

⁶⁹From notes taken of remarks by House Speaker Marvin Mandel before the Citizens Commission on the General Assembly, dinner meeting, the Belvedere Hotel, Baltimore, November 10, 1966.

CHAPTER VIII

ENTER THE EAGLETON INSTITUTE, BROADENING THE BASE
OF THE CITIZENS COMMISSION, AND A COMPARISON OF
THE TWO LEGISLATIVE REFORM STUDIESA. THE EAGLETON INSTITUTE: ITS BACKGROUND AND ENTRY
INTO MARYLAND REFORM POLITICS

The Eagleton Institute is an example of the integration of political science with practical politics. The idea that meaningful, practical research could improve the state legislative process grew out of the association between Dr. Donald Herzberg, Eagleton director, and California Assembly Speaker Jesse Unruh. Both men had the belief that a series of studies of state assemblies could result in improvement in the legislative process. With the endorsement of such groups as the National Legislative Leaders Conference, the Ford Foundation granted funds in 1964 for Eagleton to begin its work. The first study of the Institute--recommendations for the improvement of the legislature in Rhode Island--was followed in 1963 by a major report on the New Jersey Legislature.¹ These early reports

¹The New Jersey Legislature, A Report Submitted by the Eagleton Institute of Politics (Rutgers: The State University, November 15, 1963).

were evidence of what Eagleton could do in the field of legislative reorganization.

In 1966, Dr. Alan Rosenthal was hired as director of Eagleton's Center for State Legislative Research and Service, and in the same year a grant from the Carnegie Corporation authorized funds for Eagleton-sponsored conferences with "promising young state legislators," to be held each year in Florida. Famous for its "case studies in practical politics," Eagleton has recently revised that program to include analysis of the politics and consequences of legislative reform.² Dr. Rosenthal was appointed director of the Maryland study in September 1966.

On June 20, 1966, a major development occurred that would affect legislative reorganization in Maryland. Speaker Marvin Mandel announced that he had submitted a proposal to the Eagleton Institute, a private research agency affiliated with Rutgers University and operating in the field of legislative reorganization. The proposal was supported by a \$20,000 authorization from the State Board of Public Works for a comprehensive study of the General Assembly by Dr. Donald Herzberg and his Eagleton associates. The Mandel move was both a response to external pressures generated by the Citizens Commission on the General Assembly and a desire by the speaker to take certain initiatives himself in behalf of legislative reorganization.

²The information about the history of the Eagleton Institute was obtained in an interview with Dr. Alan Rosenthal on February 3, 1969.

According to a newspaper report announcing the Eagleton study in Maryland, the House Speaker maintained that "while a number of groups are looking at the Legislature with an eye toward its revamping, I don't think that they have the professional background or knowledge of the field to give the General Assembly what it really needs."³ While the move appeared to undercut the Citizens Commission effort at the time Mandel announced the Eagleton appropriation, perspective and hindsight have illuminated the Eagleton proposal as constructive in several respects.

By its use of the comparative study approach, Eagleton could apply the academic expertise of its staff and produce a document on the Maryland General Assembly by identifying useful sources of information--among them, legislators and public hearing witnesses--as well as identifying the deficiencies that seemed to be present in Maryland's legislative operation.

As this chapter will indicate, the Eagleton Report, in its general approach, accorded with the Citizens Commission report but, at the same time, presented more technically comprehensive research data through two capabilities not available to the Commission: (1) a research team that interviewed members of the Assembly for two months during the 1967 session and (2) comparative data from studies made of other state legislatures. Another difference between

³"Mandel Urges Institute Study of Legislature," The Sun (Baltimore), June 21, 1966.

the two groups was Eagleton's lack of a strategy of implementation comparable with that of the Citizens Commission program. In other words, Eagleton did not practice the politics of reform as an active participant on the legislative scene in Maryland. The reason for this more restrained approach was Eagleton's mandate--to prepare a report for the General Assembly and its leadership. It must be noted that the title of the Citizens Commission document, paid for out of private funds,⁴ was "to the Legislature and the People of Maryland" (emphasis added).

Of particular interest in connection with the announcement of the Eagleton study is the role of the legislator identified earlier in this chapter as the most powerful member of the Assembly and on whom the success of the legislative modernization largely depended--Speaker Marvin Mandel. Although Speaker Mandel's strategy behind creating a reform program "he could call his own" was not entirely clear in June 1966, it becomes more evident with the aid of historical perspective. Although the speaker had certainly responded to a reform environment and the attention being focused

⁴The publication of the Citizens Commission Report was made possible through a generous grant from the Citizens Conference on State Legislatures, a national organization to encourage reform of state legislatures throughout the nation. The principal officials of the Conference and initiators of this support, advisors on substantive matters and strategy of implementation, include Mr. Larry Margolis, Executive Director; George Morgan, National Field Services Director; Dr. Warren Peterson, Research Director; and Mr. Alden Baker, Regional Consultant. Funds were raised through a broad-based campaign among almost 100 Maryland businesses, and additional support was provided through the Young Democratic Clubs of Maryland.

on the Citizens Commission public hearings, he was also protecting himself against the danger of a Commission report that might be destructive or, more likely, one that would lack sufficient professional expertise for the Assembly to implement.⁵

In his political maneuvers, Speaker Mandel usually operates to protect any potentially weak flank. Such a potential weakness was present in June 1966 when the Eagleton study was announced. Only four months in operation, the Citizens Commission and its leadership was an unknown quantity which might write a report to set back, rather than improve, the prognosis for legislative modernization. If the report were superficial in content or antagonistic toward the Legislature, the probability of its acceptance by members of the Assembly would be diminished. And although the Commission had relatively clear ideas of how to fashion its report and work with legislators to implement its recommendations, such intentions were no guarantee of comprehensive, but carefully staged legislative modernization for Mandel, who had high stakes in the existing system but recognized the need for improvement.

Speaker Mandel has revealed his thinking in calling upon the Eagleton Institute to conduct a study by stating that

the Wills Commission did something that we in the Legislature simply couldn't do for ourselves--focus public attention on

⁵The membership and internal dynamics of the Citizens Commission will be examined in this chapter, but it is sufficient to say that, in comparison to the Eagleton staff, its members were "amateurs" in the specific details of legislative operations and procedures. Some, including the author, were knowledgeable in legislative process generally, and many were active participants in Maryland politics. The group still had a relatively amateurish and grass-roots complexion.

our problems. You provided the foundation for getting the technical help of Eagleton, and the two reports go well together. In fact, they agree on a sufficient number of points that the case for improving the Legislature is greatly strengthened. If the recommendations of these two reports continue to get proper legislative analysis, we'll have members that understand better what they are doing more than they presently do, primarily because they have studied the system. Perhaps we could have avoided the cost of a second study, but the two pairing off as they have, even though there are differences, strengthens the case for internal reorganization. Besides, there was no assurance that your report would be as constructive as it is, although you began to add some real muscle when the Republicans, business community, and foundation backing were brought in.⁶

What were Mandel's concerns, if any, about decentralization of the legislative leadership that might be created through committee reorganization and a corresponding development of powerful chairmen and perhaps less control by the presiding officers of both houses and their associates? His response was illuminating: "No speaker has automatic power by virtue of his job. He builds up long-term credit from the way he performs, and particularly by how he deals with the members on an individual basis. If you're talking about altering a leader's power, that is difficult to do by mechanics only, and when it comes to improving the committees, the best thing that can happen to the Legislature is to get all the members participating--and that is done in committee."⁷

⁶ Interview with Speaker Marvin Mandel, November 14, 1967. For an informative general analysis of the kind of legislative pattern Speaker Mandel appears to follow see "The Lawmaker," Chapter 5, and "The Development of Political Personalities," Chapter 6, in James David Barber, The Lawmakers: Recruitment and Adaptation to Legislative Life (Yale University Press, 1965),

⁷ Ibid.

B. BROADENING THE BASE OF THE CITIZENS COMMISSION

By his reference to inclusion of business leaders and Republicans on the Citizens Commission membership list, Mandel added credibility to a tactic employed by the Commission as part of its politics of reform. After two months of public hearings, it was clear, primarily from press reports and the willingness of political leaders to testify at those hearings, that the fledgling study of the Young Democratic Clubs had sufficient influence to at least capture the attention of the news media. As a calculated move to attract members from both the Republican Party and civic and business leaders, the study group had changed its name to the Citizens Commission on the General Assembly. This assumption of a "grass-roots" aura coincided with the group's public hearing on Capitol Hill for members of the Maryland congressional delegation on May 25, 1966.⁸

For the next two months, serious efforts were made to include participation by the Young Republican Clubs of Maryland. Initially, the Young Republicans were reluctant to become involved, not because of a lack of concern for legislative modernization, but rather because of promising election prospects for the State's minority party, as the Democrats prepared to indulge in a bitter four-man primary race for the Governorship (Chapter IV, supra). However, sufficient pressure was applied by obtaining the support of the

⁸See Chapter VII, supra.

Commission's work by, and the public testimony of Republican gubernatorial candidate Spiro T. Agnew, House Minority Leader J. Glenn Beall, and then-Delegate Charles Bresler (R., Montgomery County), who was running on the Republican ticket for State Comptroller.⁹ On the same day that Agnew testified before the Commission, the press carried the results of a meeting held the night before by the Young Democratic Clubs, at which the state organization voted to make their study of the General Assembly a bipartisan one.¹⁰

With this broadened base during a highly bitter election year, the Citizens Commission took one further step in developing community support. Leaders from business (including the major public utilities of the State), labor, education, and key civic groups were invited to join the now bipartisan group. The Citizens Commission on the General Assembly had now added substance to its name, therefore giving itself credibility as a private organization which could proceed along the pathway of reform during a volatile election year.

By having expanded its membership to both the community elite and students of the legislative process, the Commission was able to more easily attract all the candidates for governor to its public

⁹See "Agnew Proposes Aid to Assembly," The Sun (Baltimore), July 31, 1966.

¹⁰"Democrats Urge Bipartisan Study," The Sun (Baltimore), July 30, 1966.

hearings (Chapter VII). The device of putting all these candidates--liberal to conservative--on record for major reorganization of the General Assembly made it more probable that the Commission's recommendations would be an effective component of the politics of reform.

C. THE CITIZENS COMMISSION AND EAGLETON INSTITUTE REPORTS COMPARED

A detailed comparison--recommendation by recommendation--of the Citizens Commission and Eagleton Institute reports is reported in Appendix A. These comparative data, prepared by Legislative Reference Service Director Carl Everstine and the author, point up many similarities and some differences on the specific proposals for reorganization of the General Assembly. Dr. Alan Rosenthal, director of Eagleton's Maryland study, believes that "on most points, the two reports are in substantial agreement." And that view was corroborated by Senator Blair Lee (D., Montgomery County), author of the Legislative Council memorandum in support of a joint budget committee (Chapter IX) along the lines recommended by the Citizens Commission. Lee noted that "the differences between these two reports are of degree and technique."¹¹

Nevertheless, these two legislative reorganization reports still contain certain broad distinctions that can appropriately be

¹¹Interviews with Dr. Alan Rosenthal, February 1, 1969, and Senator Blair Lee, February 13, 1969.

examined in relation to (1) freedom for legislative innovation; (2) practical politics in the Legislature, specifically, and Maryland government, generally, including strategies to develop support from Assembly members, the political community, and the general public; (3) retention of traditional symbols of stability as part of the reform process; and (4) decentralization of power and strengthening legislative oversight.

1. Legislative Innovation. The Citizens Commission report appears to allow more freedom for legislative innovation in implementing its recommendations than does the Eagleton Report. In part, this distinction can be attributed to the Commission's lack of technical research support and the kind of comparative information available to Eagleton through the latter's studies of other state legislatures. Throughout its report, Eagleton offers more detailed suggestions on how to mechanically implement administrative and procedural reorganization. Although the research capability of a volunteer reform group may be less than that of a professional agency, a subtle distinction exists between the two Maryland reports that is not necessarily based on technical expertise. Compared to Eagleton's recommendations, the Citizens Commission proposals imply more freedom for the General Assembly to work its way within broad guidelines. One example of Eagleton's more structured approach is its recommendation that the 90-day session be written into the Constitution. That proposal contrasts with the Commission view that while 90 days appears to be the

most reasonable length of session for the 1960's, constitutional rigidity should not prevent legislative leaders from exercising internal management responsibility to increase the session's length when changed conditions so warrant. Eagleton's somewhat cautious approach to legislative innovation in no way approaches the more restrictive limitations that were sought by the Maryland Constitutional Convention (Chapter X).

2. Practical Politics of the Legislature. As noted in Chapter VII, the Citizens Commission organized its public hearings both within a reform atmosphere and the realistic political framework of 1966, generating public support from candidates in hard-fought primary and general election campaigns. In Chapters IX through XIII, it will become apparent that the Commission sought the support of Maryland legislators through a combined strategy of cooperation and pressure for reform. The texts of both reports reveal an awareness of the politics of the Legislature. However, as a Maryland organization, the Citizens Commission was able to propose changes that included a built-in sensitivity to politics and personalities, without compromising basic objectives. This sensitivity affected one of the Commission's proposals for improved research procedures. While Eagleton developed administrative proposals for actual reorganization of the Legislative Reference Service, the Citizens Commission recommended increased staffing and research for each standing committee. The latter strategy might usefully be considered "indirect administrative reorganization of

the Reference Service." By the tactic of a "softer" approach in reorganizing this agency, the Commission might be able to maintain the tacit support of Reference Service Director Carl Everstine, even though Eagleton and the Citizens Commission are in full agreement on the necessity of reorganization.

As a general proposition, the Citizens Commission had as a defined goal the objective of gaining the support of legislators for its program through intensive follow-up contact after the report had been distributed. Eagleton's work was in the nature of a contract with the Assembly without implication of a "sales job" to promote the product. Clearly, the Citizens Commission was more of a pressure group than Eagleton, operating through a more reform-oriented "political" strategy. The mandate of Eagleton did not include a public campaign for reform, and as a result, its report is more detailed in scope and less political in tone.

3. Traditional Symbols of Stability--An Aid to Reform. As part of the strategy of "retaining traditional symbols of stability in the process of implementing reform" (Chapter VI) the Citizens Commission recommended retention of the Legislative Council, but its proposal actually undercuts the Council's power by also recommending a year-round committee system (in other words, the same committees operating during and between the sessions). Under the Commission proposal, the Council would be an administrative and coordinating body, hopefully with a diminishing role in its influence over internal policy decisions about bills that emanate from those committees.

Although Eagleton appears to eliminate the Council by changing its name, its replacement (a Joint Committee on Legislative Policy and Management) appears to have more control over the reorganized committees, because their committee system is split into two groups: one during the session and the other "interim" between sessions. If Eagleton wanted to strengthen the role of individual committees, it may not have really accomplished that purpose--primarily because of connections that may develop between interim committees and their parent group (the Joint Committee on Legislative Policy and Management) both of which operate primarily between sessions. Retaining the symbolic functions of the Council in a vastly reorganized committee system may actually permit reform to develop more efficiently than if administrative power is abruptly rearranged.

4. Decentralization of Power and Legislative Oversight. The Citizens Commission's analysis of the Legislative Council--including its retention of a purely administrative supervisory body in a system of year-round committees--is based largely on the view that at least some decentralization of power and responsibility has become necessary in this day of complex economic and social legislation. Particularly is this true in legislative committee evaluation of programs which involve financial participation of a state with the Federal government.

Another difference in the centralization vs. decentralization of power issue is contained in the recommendations about the assignment of bills. Of crucial importance to a more realistic assignment

of bills is the establishment of a Rules Committee, as recommended in the Citizens Commission report. On pages 21 to 23 of its Report, the Commission noted the inequitable distribution to committee workload and what it termed "misassignment" of bills. This may have been the practice in order that legislative leaders could more effectively control the final disposition of legislation by committees they could depend upon to respond to their wishes. In accordance with the concept of a "responsible" legislature (Chapter II) the Commission recommended a Rules Committee--more broadly based than a small, informal leadership group--to assign bills. Eagleton recommended this duty be fulfilled by the presiding officers--little change from the present procedures.

Both reports strongly emphasize the need for increased legislative oversight, particularly in the budget and finance areas.

In addition to the broad and perhaps subtle distinctions that can be made between the Citizens Commission and Eagleton reports, differences can be discerned in six specific areas of legislative reorganization: (1) length of session; (2) standing subcommittees vs. ad hoc subcommittees; (3) a rules committee or the presiding officers to decide committee jurisdiction; (4) reorganization of the Legislative Council; (5) committee operations between sessions; and (6) reorganization of the Legislative Reference Service. Although these problems have been examined in reference to each report's general framework and philosophical approach, they also merit analysis as specific areas of reform.

1. Length of Legislative Session. It has been noted (this chapter, supra) that the Citizens Commission believed a constitutional limitation on the Assembly session implied a distrust of the legislative process. Dr. Rosenthal has observed that "we felt the Legislature was not ready to have control over its length of session, and the predictability provided by constitutional specification would be beneficial."¹² Both Senator Blair Lee and Delegate Thomas Hunter Lowe concurred with Dr. Rosenthal--in Lowe's words, "I regret that I think that the time is far too short, but there should be a time limitation to more or less hold our feet to the fire."¹³ One possible compromise not noted in either report is a constitutional provision for a 90-day session, with an additional provision permitting the Assembly to change the limitation by a two-thirds vote.

2. Committee Reorganization. Both Eagleton and the Citizens Commission concurred in the need for distributing the committee workload as evenly as possible, because "two committees in the House, composed of less than 45 per cent of its membership, carried almost 80 per cent of the committee workload."¹⁴ Also, each

¹²Letter from Dr. Alan Rosenthal to Louis Silber, research associate for the Citizens Commission on the General Assembly.

¹³Letter from Thomas Hunter Lowe to Louis Silber.

¹⁴Citizens Commission Report, p. 22.

committee should justify and explain the acceptance or rejection of major legislation rather than "permit automatic passage on one hand or deal silent death on the other."¹⁵ However, one important difference between the two reports is apparent in the different recommendations for the use of standing subcommittees favored by Eagleton. The Citizens Commission preferred to maintain the integrity of the newly created standing committees"recommending that subcommittees, special committees, and joint committees be established and employed on an ad hoc basis as deemed necessary by the appropriate standing committee. The rationale behind the Citizens Commission approach was adequate recognition of the newly created standing committees. However, Dr. Rosenthal observed that "with committee consolidation, it seemed advisable to suggest regular institutionalized subcommittees which could easily be formed in view of the broad jurisdiction of the full committees."¹⁶ The Citizens Commission believed that, in addition to the contention that creation of permanent subcommittees might eclipse the standing committees, the Citizens commission foresaw the danger of a workload imbalance similar to that identified on pages 21 to 23 of its report. In expressing agreement with the Citizens Commission view, Senator Lee said that "the ad hoc arrangement is the best solution because the Legislature, particularly the Senate, is

¹⁵ Ibid., p. 25.

¹⁶ Letter from Dr. Rosenthal to Louis Silber.

just not large enough to have the detailed set-up recommended by Eagleton."¹⁷

3. A Rules Committee. The assignment of bills and committee jurisdiction has been recognized by both the Eagleton and Citizens Commission reports as one of the most important procedures in the legislative process.¹⁸ Eagleton concurred with the Citizens Commission proposal that "legislation authorizing new or substantially altered programs should be referred to a substantive committee for program evaluation and then to Finance or Ways and Means for decision of appropriations."¹⁹ What is essentially a modification of the dual appropriation-dual authorization system in Congress was applied to the General Assembly by both study groups. In the Maryland proposals, the subject-matter committee and the finance committee would examine the same legislation, as contrasted with two bills (program authorization and funding) which are reviewed by separate committees on Capitol Hill. The rationale behind the state legislative modification is the limited time within which an assembly must complete its work each year--in Maryland's case 70 days.

But, as the Citizens Commission observed, the problem goes beyond a thorough examination of legislation from a content, as

¹⁷Telephone interview with Senator Blair Lee, December 22, 1968.

¹⁸See Citizens Commission Report, pp. 21-26, and Eagleton Report, pp. 67-75.

¹⁹Citizens Commission Report, p. 32.

well as appropriation basis.²⁰ The Commission recommended that a rules committee be empowered in each house to assume responsibility for the assignment of bills--a different proposal from Eagleton's which supported the existing arrangement whereby the Senate and House presiding officers decide committee jurisdiction. In a study of bills during the 1966 House session, the Commission classified 55 as education in content and purpose--"of these 55 bills, only 16 or 29.1 per cent were initially referred to the Education Committee. Of these 55 education bills, 43.6 per cent were directly referred to the Ways and Means Committee."²¹ The reasons for these "misassignments" could be several: the lack of a modified dual referral system; the pressure of time; and what also concerned the Commission--a concentration of power in the hands of the Legislature's presiding officers. This control of jurisdiction per se may not have weakened the legislative process twenty years ago when a lesser number of bills went into the hopper. But in the context of today's large number of complex bills, a rules committee--its membership including key committee chairmen--might develop a reasonably orderly and "subject-oriented" approach in referring bills to committees.

Predictably, Maryland's legislative leaders did not favor the decentralization concept. Delegate Thomas Hunter Lowe, who

²⁰Eagleton also notes that "members of the Legislature, who were interviewed in our survey, generally agree that some system of dual or joint referral is best. More than two thirds felt that bills should go first to substantive committees and then to the finance committees," Eagleton Report, p. 69.

²¹Citizens Commission Report, p. 22.

displayed a keen awareness of legislative power in the Citizens Commission hearings (Chapter VII), "prefers the continuance of the presiding officers. I have noted that committees to determine procedural matters can bog down legislative procedure quicker than any other concept."²² And Senator Blair Lee noted that "when you have too much decentralization, you will weaken your leadership until it simply falls apart."²³ According to Lee, "there is virtue in giving power to leaders if the result is effective leadership." He expressed the concern that the establishment of a rules committee would create "political jockeying around in deciding what bills go where." According to Dr. Rosenthal, the Eagleton approach was, in part, predicated on "the views of the legislative leaders, and their recognition that bill assignments had not always been appropriate in the past."²⁴ At the time of the writing of this dissertation, the Eagleton recommendation would appear more feasible for the Maryland General Assembly, provided that past inequities and inconsistencies of bill referral are corrected.²⁵

²²Letter from Delegate Lowe to Louis Silber.

²³Telephone interview with Senator Lee.

²⁴Interview with Dr. Rosenthal.

²⁵For analysis of the deficiencies and problems in Rules Committee practices in the U. S. House of Representatives at the time of the 1961 decision to enlarge that committee, see Robert L. Peabody, "The Enlarged Rules Committee," and Milton C. Cummings and Robert L. Peabody, "The Decision to Enlarge the Committee on Rules" Chapters VI and VII, New Perspectives on the House of Representatives (Chicago: Rand McNally and Co., 1963), pp. 129-195.

4. Year-round Committees or the Combination of Interim and In-Session Committees. The differences in the Eagleton and Citizens Commission approaches on standing committees will be examined in detail in Chapter IX, with particular reference to a Joint Budget Committee. The essence of the Citizens Commission recommendation is that standing committees be authorized to function on a year-round basis, thereby creating continuity and stability in the committee research and review process. Eagleton supported the use of interim joint committees, separate units from those which function in-session, on which sit both Senate and House members. However, there was nothing in the Commission recommendation that precluded joint meetings of standing committees at any time during or between sessions. In line with the Commission's objective of adequate specialization in complex legislative matters, the year-round standing committee would provide continuity between sessions. In addition, the break-up of committees that function during the session might cause greater dependency on the Legislative Council (or the Eagleton equivalent--a joint Committee on Policy and Management).

5. The Role of the Legislative Council. The role of the Legislative Council has been examined in this chapter and will be analyzed in the context of the Council's action on committee reorganization proposals (Chapter XIII). Essentially, Eagleton called for abolition of the Council, but its suggested replacement--the Joint Committee on Policy and Management--is perceived by

Dr. Rosenthal "as a single agency to coordinate and manage legislative affairs throughout the year."²⁶ Although the Commission recommended strengthening of the role of the Council, it should be emphasized the strengthening was suggested in "the areas of policy-making and coordination of year-round committee work " (emphasis added).²⁷ While retaining the traditional symbol of the Council as an administrative entity, the Commission in reality recommended transfer of its decision-making power over bills to appropriate standing committees. Senator Lee believes that the Council has begun to effect such a transfer: "The Legislative Council itself has recommended a reduction in its size, a cut-back in its authority, and an extension of that authority over legislation to the standing committees."²⁸ This view is further clarified by Delegate Lowe who concludes that "we have taken a compromise of both the Wills and Eagleton recommendations by keeping the Council as a screening committee and by maintaining the standing committees between sessions, breaking them up into study sub-committees of the Council."²⁹ The Citizens Commission would have preferred more autonomy from the Council, but the continuity of the committee system has been largely retained from in-session to the interim-period.

²⁶ Interview with Dr. Alan Rosenthal.

²⁷ Citizens Commission Report, p. 26.

²⁸ Interview with Senator Blair Lee.

²⁹ Letter from Delegate Thomas Hunter Lowe to Louis Silber.

6. The Legislative Reference Service. The impact of the Legislative Reference Service, as a permanent agency, upon the elected policymakers in the Assembly will be examined in Chapters XI and XIII. The difference between Eagleton and Citizens Commission recommendations was, as noted earlier in this chapter, largely one of sensitivity to the politics of the Legislature. As an outside research group, Eagleton could more effectively examine the administrative weaknesses of Legislative Reference and recommend a redistribution of research service to individual committees instead of the Legislative Council. (See comparison sheet for analysis.) The redistribution would be accomplished through the creation of Division of Legislative Services to include four bureaus: the Bureau of Legislative Services; the Bureau of Policy Research; the Bureau of Fiscal Research; and the Bureau of Post Audit. Dr. Rosenthal reports that "it did seem that necessary staff services were not being supplied to the Legislature. Our proposals, particularly for a new Policy Research Bureau, were designed to insure that standing committees . . . were furnished research and support during the session and interim. I did not believe that this could be done through the existing Legislative Reference Service as well as through a new agency."

With the public hearings of the Citizens Commission completed and both the Eagleton and Commission reports submitted on the record for comparison and analysis, the story of legislative reorganization in Maryland moves to the implementation phase--"the politics of legislative reform in action."

PART IV

THE POLITICS OF LEGISLATIVE REFORM IN ACTION

CHAPTER IX

LEGISLATIVE REORGANIZATION IN 1967:

ACTION BY THE GENERAL ASSEMBLY

A. THE 1967 SESSION--INFORMING LEGISLATORS
OF THE CITIZENS COMMISSION REPORT

A reapportioned General Assembly, a new governor, a forthcoming Constitutional Convention, and specific recommendations for modernizing the State government were ingredients of the politics of reform that became integral parts of the 1967 Maryland legislative session. From the first rap of Speaker Marvin Mandel's gavel to final adjournment, the General Assembly was faced with major changes in its own membership, strong pressures for financial and social reform legislation, and equally vigorous pleadings for reform of its organization and procedures. Part of its reorganization would be the subject of a Constitutional Convention scheduled to open on September 14.

By January 8, two weeks before the 1967 session opened, the Citizens Commission on the General Assembly had completed its report and presented 46 reorganization proposals to all legislators for their review. And, concurrently, the Eagleton Institute of Rutgers University was beginning its familiarization with the

Maryland Legislature through research and interviews with Assembly members in Annapolis. The process by which a legislature examines itself is complicated and, of necessity, occurs both through the private deliberations of the members and through their interaction with groups and individuals who are generally considered a part of the legislative system. By informing the public of its recommendations through the news media and legislators through advance copies of the full report, the Citizens Commission became part of Maryland's legislative system as it injected its program into the 1967 session.

At this point in the politics of legislative reform, it is appropriate to analyze what might be called "the methodology of implementing political change" in the legislative process. It was clear from the beginning of the Citizens Commission's public hearings that this kind of outside reform group was a potential adversary to the legislative leadership. With its credibility not known, as illustrated by Speaker Mandel's initiatives in establishing the Eagleton study,¹ the Commission could have operated publicly as a "muckraking" reformist group whose principal objection in support of its recommendations was to generate public approval by attacking the political institution it proposed to improve and modernize. Such a tactic might have generated the hostility of the Commission's clientele, the legislators themselves, who had the power to accept or reject the report's proposals.

¹See Chapter VIII.

As an alternative to reform through opposition, the Commission began a calculated series of political moves to enlist the support of the General Assembly leadership and membership. Instead of informing General Assembly members by public release of its report, the Citizens Commission distributed advance copies to legislators shortly after the news media were receiving a series of press announcements on each chapter of the document.

Distribution of the Citizens Commission report--one release for each of nine chapters--to the news media (press, television, and radio) in Baltimore and Washington began on December 18, 1966, and concluded one month later on January 16, 1967, four days before the opening of the legislative session. Members of the Assembly received advance copies on January 3, two weeks after press distribution began. The Commission avoided simultaneous distribution because of concern that an overzealous legislator might publicly discuss the entire document before sufficient analysis and public support were developed through news media reporting and editorial comment. However, all legislators received complete advance information two weeks before the second half of the document had been given any news media coverage.

Public distribution of the report was done by sections in order to provide the media with the best opportunity for analysis of each aspect of legislative modernization, rather than a broad and potentially superficial treatment of the entire report or coverage of primarily "hard news" items. In other words, the

Commission made a deliberate effort to provide the press with an in-depth analysis of the substantive recommendations that might not be "exciting" or headline subjects, but were necessary for a complete and informed public understanding of legislative modernization.

Although a means of providing comprehensive review of Maryland's legislative problems and, hopefully, public support for the financial costs necessary to implement legislative change, the tactic of announcing Commission recommendations "seriatim" was criticized by a correspondent from the Baltimore News-American, who preferred to report the entire document as a single news story, and, preferably, in the "political personality" context. According to Frank DeFilippo, the "news" in the report was not so much its administrative and procedural recommendations, but a small item carried in the chapter "General Assembly Costs":²

All public funds expended by the Legislature or legislators should be carefully enumerated on the public record. It has been brought to the attention of the Commission by several sources that contingency funds exist in the Legislature. Estimates of the amounts of these funds have varied from \$50,000 to \$200,000. As the public record does not disclose the existence of such funds, obviously no financial statement or accounting of expenditures is available for public scrutiny. But, if such funds exist, they should be a matter of public record and clearly identified.³

²Interview with Frank DeFilippo, political correspondent, Baltimore News-American, February 1, 1967. See "General Assembly Costs," The Citizens Commission on the General Assembly Reports to the Legislature and the People of Maryland, pp. 49-51.

³Ibid., p. 50.

At the beginning of its legislative study, the Commission had acquired information from a former speaker about a contingency fund administered by the speaker of the House of Delegates.⁴

A. Gordon Boone did not offer the information to criticize his successor, but rather as a means of illustrating the political power that accrues to the office of speaker through administrative procedures. Instead of implying illegal or improper administration of this particular fund, the Commission criticized the absence of contingency funds from the legislative budget as cost or "line" items. This approach was taken for two reasons: (1) The Commission had no knowledge of any illegality and (2) legislative support for the report was unlikely if press coverage focused on unproven administration of the fund. With appropriate political embellishment, the recommendation could have been reported in the press through such headlines as "Commission Attacks Mandel Slush Fund" or "Speaker's Secret Kitty Discovered by Reformers."

DeFilippo declined to cover the Commission report because he did not receive it in its entirety, nor were any politically explosive facts or recommendations "leaked" prior to issuance of press releases on each chapter. However, this tactic of avoiding sensational news coverage of reform politics may have increased the confidence of legislators in the report and the motivations behind it, particularly because they were reading their advance copies during the public distribution of the second half of the report.

⁴Interview with A. Gordon Boone, former speaker of the Maryland House of Delegates, May 4, 1966.

B. LEGISLATIVE RESPONSE TO RECOMMENDATIONS
FOR INCREASED ADMINISTRATIVE STAFFS

Although the Commission had used the calculated tactics of (1) advance distribution of the report to all legislators and (2) chapter-by-chapter release of the report to the press, a political danger for the reformers became apparent soon after the 1967 session opened. During a "Salute to the Legislature," a reception for Assembly members sponsored by the Commission and the Young Democratic Clubs of Maryland, Senator Roy Staten (D., Baltimore County) discussed the Commission's administrative and research staff recommendations. He was particularly enthusiastic about the following sentence in the report:

In the legislators' home county or district, a delegation office with a permanent secretary to take messages and answer mail should be sufficient for out-of-session activity. Although many legislators have their own private business offices, their legislative duties, including committee work and constituent services, should not be handicapped by the absence of secretarial help or office space . . .⁵

Although it has been noted in Chapter V that Senator Staten had recognized the need for legislative modernization because of reapportionment, his enthusiastic support of the benefits of administrative staffing had the aura of a "deadly embrace." During his discussion of administrative improvements, Staten did not comment about the committee reorganization and financial recommendations

⁵"Legislative Staff, Facilities, and Automation," Citizens Commission Report, op. cit., p. 42.

that would require more work by the individual member, particularly between sessions. The Commission's lack of exposure to the methods of a skilled politician such as Staten were a handicap in not ascertaining the full implications of the Senator's remarks. Senator Blair Lee III (D., Montgomery County) was present during the discussion and later observed:

It was clear to me while Roy put on a "white hat" and supported the entire Commission report, he reserved his real enthusiasm for those recommendations that would provide benefits to the individual members, particularly salary and staff increases. By this approach, the Legislature could be cast in the light of endorsing only those changes that would accrue benefits to the individual members and not increased attention to duty and hard work. I was also concerned that the press would draw the wrong interpretation to further support its caricature of a "do-nothing" branch of Maryland government. Can't you imagine an editorial on "whether we would be using office funds to gear up for the next campaign"!⁶

Senator Staten's interest in legislative staff improvements would soon place him in the chairmanship of a special Senate committee to study the Citizens Commission recommendations on professional personnel increases. To gather support for his views, he invited the chairman of the Commission to address the State Senate on January 31 concerning the Citizens Commission report, with particular reference to the problem of staff and facilities.⁷

That appearance before a state legislature being asked to reform itself constituted interaction between the reformer, the political

⁶Interview with Senator Blair Lee, III, February 2, 1967.

⁷The Citizens Commission chairman was originally invited by Senator Roy Staten to testify before a specially formed committee on staff and facilities. However, upon determining that there was sufficient interest in legislative staffing and administrative improvements among the full membership of the Senate, Senator Staten enlarged the audience to include the full Senate.

institution being reformed and the press. As requested, the chairman focused his remarks on the necessity for committee staff increases and assignment of interim administrative assistance for individual legislators. But he also emphasized that "year-round" committee work by legislators themselves is at the heart of the legislative process: "Cost must be considered, and the Commission recognizes that the Legislature will have to consider the expenses of interim staff in providing adequate constituent services by its members."⁸

A lengthy question and answer session with the senators indicated general support for the program of the Citizens Commission, although questions focused primarily on the research and administrative staff recommendations, the agenda established by Senator Staten. The only exception to the support evinced in the chamber was a colloquy between the Commission chairman and Senator John W. Steffey (R., Anne Arundel County), who questioned the view that a danger existed in the imbalance that might be created between the executive and legislative branches if the Assembly's staffing needs were not met. A Republican ally of Governor Agnew, Steffey was clearly sensitive to the observation that a \$390,543 increase in staff expenses had been requested by the recently elected Governor for his office operations. But with the exception of this discussion and its partisan overtones,

⁸Ibid., p. 2.

the senators' views basically recognized the need for legislative improvement.

However, the report in the Baltimore Sun the next morning was sharply antagonistic. Under the headline "Senators Love Wills' Idea of \$12,000 for Expenses," an impression was created of legislators lining their pockets in support of only those reform recommendations that would improve the financial condition of the legislator, whether by direct salary increases or by increased administrative assistance. The prediction made by Senator Lee had come true--the adversary relationship that traditionally exists between the legislative branch and the press had surfaced with potentially serious implications for the success of modernizing the Maryland General Assembly.

If favorable public opinion is an ingredient of support for government reform, then damage was done to the Citizens Commission's recommendations for administrative staff increases. The public impression of the General Assembly could only be weakened through the Sun article of February 1 which was contrary to the newspaper's general support of legislative modernization.

In response to a question by Senate Finance Committee Chairman Harry Hughes (D., Upper Eastern Shore) for a cost estimate of "the optimum in district office operations for a Senator," the chairman responded that \$12,000 was the optimum figure, but the legislators should establish staff expenses at no more than \$4,000 per year until action had been taken on internal reorganization

that would justify public confidence in added administrative costs. He also recommended that payroll and office expenses be processed by the State Comptroller's Office in order to avoid any question of the individual legislator's honesty in administering the staff allotments. But, he concluded, it was essential to provide funds where none had ever been appropriated--for constituent services in the senator's home district.

The press reported this exchange as follows:

The State Senate listened enthusiastically today while an especially invited witness told them they should be allotted as much as \$12,000 a year in off-season expenses.

Then, claiming the extra expense money as their long-delayed due, the Senators brushed aside a suggestion that the money be requested in gradual stages.

Instead, they referred pointedly to the \$390,543 increase in staff expenses that Governor Agnew is asking in his executive budget and made it plain that they thought legislative needs came first . . . Except for Mr. Steffey's brief interruption, Mr. Wills' testimony was listened to with open delight . . .⁹

Following publication of that article, the chairman drafted a letter to Senator Staten in which he recommended that "legislators avoid the impression of lining their pockets at the expense of a comprehensive program of legislative modernization." A copy of that letter was sent to the news media in order to put the issue of legislative expenses in total perspective.¹⁰ It is

⁹"Senators Love Wills' Idea of \$12,000 for Expenses," The Sun (Baltimore), February 1, 1967. For similar approach by the Baltimore Sunpapers to the cost of administrative expenses in the General Assembly, see "Expense Fund Drive Begun in Annapolis. Thousands Sought for Off-Season Costs of Legislators," by Charles Whiteford, The Sun (Baltimore), January 25, 1968.

¹⁰"Wills Memo Sent to Staten," The Sun (Baltimore), February 10, 1967.

interesting to note, however, that legislative complaints about lack of administrative staff expenses, as compared to those allotted the governor's office, encouraged Governor Agnew to recommend increased financial support for legislators "in a manner appropriate to the responsibility of the individual, with due regard to committee assignments and positions of leadership."¹¹ That recommendation was made on the same day as publication of the Sun article criticizing the Senators' endorsement of administrative assistance for district offices.

The news media coverage of legislative modernization, at least those recommendations related to administrative expenses and salary increases, clarified the need for another tactic in implementing political change in the legislative process. Colloquially, the tactic might be called "the carrot-and-stick" approach whereby the reformer proposes benefits to individual legislators that will at the same time assist in modernizing Assembly operations. But he also makes demands upon them for greater efficiency and harder work in the performance of their legislative duties. As expressed in the chairman's letter to Senator Staten, "If you expect the public to support improvements in the General Assembly, then you must be prepared to endorse recommendations that will reorganize an outmoded legislative operation, even though they may create added responsibilities upon individual legislators. Only then will the public image and visibility of the General Assembly be improved."

¹¹"Agnew Backs More Pay for Legislators. Wants Panel to Study Bigger Allowances for Expenses," The Sun (Baltimore), February 2, 1967.

The State Senate and House of Delegates approved the administrative staff proposals as reported from Staten's special committee to the Senate Finance Committee. The appropriation provided both presiding officers of the House and Senate \$5,000 each for interim expenses and chairmen of major committees and minority leaders \$4,500 each. The legislation authorized for each senator not holding a formal leadership post \$4,200 and each delegate \$1,165.

C. THE RELATIONSHIP OF THE LEGISLATURE
AND THE NEWS MEDIA

Approval of the Citizens Commission proposals for administrative staffing was the General Assembly's first public endorsement of the concept of reorganization. In a sense, however, the appropriation could not be regarded as particularly significant because the Assembly had not gone far beyond the recognition that legislators needed help to run their district offices if they were to represent constituents in an effective manner. However, the 1967 session's approval of administrative support (a direct benefit to each member) as the first step in modernizing the Assembly, pointed up a more serious problem--that of the poor public image and equally poor news media treatment of the legislative process in Maryland. The impression of senators eagerly seeking between-session money could not be regarded as merely the whim of a zealous news reporter.

It is necessary to ask why the legislative process does not lend itself to favorable news media treatment and, consequently, better public understanding. In The Governmental Process, David B. Truman has referred to the "rules of the game" in which the legislator is expected to adhere to certain norms and rules of behavior, particularly the support of orderly procedures of legislative life, including self-restraint in debate and goals; a willingness to negotiate privately and limit partisanship; and maintenance of confidences.¹² It has been noted that the norm of "interpersonal courtesy" has special importance in state legislature systems where the professionalization and specialization have not reached a high degree of sophistication. In the words of one state legislator, interpersonal courtesy means "respect for other people's opinions . . . you might have to vote with the other group when you think they are right . . . also, give constructive criticism--don't tear a bill down just because it was introduced by a certain party or individual . . ." ¹³

As exemplified by the norm of interpersonal courtesy, the legislative process is, by its very nature, one of compromise and accommodation. The news media traditionally seek controversy and

¹²For analysis of legislative norms, see D. B. Truman, The Governmental Process (New York: Alfred A. Knopf, 1965), pp. 321-351. Also, Jewell and Patterson, The Legislative Process in the United States, pp. 362-381.

¹³Wahlke, Eulau, Buchanan and Ferguson, The Legislative System (New York: John Wiley & Sons, 1962), pp. 144-145.

drama in the political arena on the theory that the public is better informed when the issues are sharpened by disagreement. Also, the news media often want access to the dynamics of the legislative process. As expressed by a Maryland television news broadcaster and former legislative correspondent in a discussion with the President of the Maryland State Senate:

I submit that we in the media, given freedom of access, can help you to bring the message of legislative modernization to our public. Give us freedom of access. We will tell this many-faceted public what your problems are; we will do it willingly.¹⁴

The response of that veteran legislator typifies a relatively cautious approach concerning news media coverage and public access to legislative deliberations:

My committee experience . . . was to invite the responsible reporters and say, "We want you to understand what we are doing. We want you to be able to be in on our discussion of these complexities, but we want some measure of freedom or discussion so that a man can talk with some degree of confidence that his remarks are not going to be in the paper."

My experience is that frequently you will take a position in committee discussion, and at the end of the discussion, which may be 20 minutes later, you have become completely convinced that your proposal was wrong. You want to go along with another idea which was contrary to your original concept.

If a quotation appears in the paper of your original statement, you can actually be destroyed politically, especially if you have taken an incorrect position which might get you in trouble. There must be an area in which private discussion with members, for the purpose of really weighing ideas and trying to come to a consensus, is very important to the legislative process.¹⁵

¹⁴David Stickle, News Director, WMAR-TV, Baltimore, in panel discussion with Maryland Senate President William S. James, Transcript of Proceedings, Mid-Atlantic Regional Conference on Strengthening the Legislature (Baltimore, Maryland, February 15, 1968), p. 91

¹⁵Ibid., Senator James's response to Mr. Stickle, pp. 227-228.

As evidenced by this dialogue between broadcaster and legislator, relations between the news media and the legislative branch are complex and not fully understood by either side.

Few generalizations have been offered about the impact of the news media on a state legislature, but through interaction between individual reporters and legislators, it is evident that tensions exist--tensions which create both positive and negative results for the state legislative process. The most identifiable tension is what Speaker Jesse Unruh has called "an instinctive desire by the reporter to prove and expose the inner workings of a state assembly, as well as any inconsistencies or weaknesses of individual legislators." He recalled "an incident with the press and my habit of speculating and analyzing problems--sometimes in the hypothetical framework--at news conferences. Several years ago when open housing was opposed vigorously by many in the California electorate, I questioned without having any particular program in mind, whether the Assembly might not wisely consider going another route on integration and develop incentives rather than compulsions. The legislative session was approaching, and there was a hard fight pending over civil rights legislation. My speculation was reported and interpreted as a demand that the Assembly go slow on this issue. The results were difficulty for me within my party and subsequently caution about analyzing problems in the abstract at news conferences."¹⁶

¹⁶Interview with Speaker Jesse Unruh, April 13, 1967.

Unruh may have thought he was speculating instead of subtly suggesting legislative programs, but the willingness of the press to interpret him freely and look for changes in direction and policy is at the heart of the reportorial function. There is an analogy between conclusions drawn from the Unruh press conference and those from Maryland senators' interest in administrative staffing for the General Assembly. In both cases, the press seeks the self-interest or the political objective hidden in carefully chosen words. The public may or may not receive accurate information, depending upon the reporter's interpretation.

In addition to analyzing the words of a legislator, the reportorial instinct is the basis of informing the public about complex legislation or a lengthy committee report. However, the Legislature has certain traditions and procedures built into its process of enacting laws that may make exposure and visibility more difficult than is possible through probing the actions and statements of individual members. According to Mr. Larry Margolis, Executive Director of the Citizens Commission Conference on State Legislatures, "One of the ways of being indirectly secret about the public's business is by the sheer heavy volume of information being given the news media at one time. I am referring to voluminous committee reports released simultaneously at the opening of a session or the influx of bills going through the decision-making process at the session's end. The press finds it almost impossible to do much more than a superficial treatment of the salient issues

before, and decisions made by the legislature."¹⁷

In addition to Mr. Margolis' concern about the ability of the press to do more than superficially report a large volume of information, the question of interpretation is again the basis of legislative distrust of the press. If a legislator fears that his remarks will not be understood or that a complex bill under his sponsorship will receive incomplete analysis, he may tend to withdraw from contact with the media and not communicate unless pressured to do so. This is particularly true in the state legislative process where procedures are less formalized and information less available than in the Congress. The press, in turn, may seek the inconsistency or the irrelevancy in what a legislator says and does.

The Citizens Commission criticized "the scarcity of public information; the careless manner in which recorded data are filed; and the absence of a complete source of information."¹⁸ However, its recommendation did not include establishment of a public relations office for the General Assembly; instead, "more adequate facilities for the news media" were recommended. A basic objection to a public relations or information office is the fact that news from the Legislature would tend to become sifted or filtered to where the public receives only the result of final decision, instead of access to or examination of the process by which a decision is

¹⁷ Interview with Larry Margolis, executive director of the Citizens Conference on State Legislatures, April 11, 1967.

¹⁸ Citizens Conference Report, op. cit., p. 53.

made. Although the press interpretation of Maryland state senators greedily seeking administrative support was unnecessarily harsh, it caused the Citizens Commission to publicly insist upon central accounting procedures and carefully regulated disbursement of funds, with records available to the press and public.

D. LEGISLATIVE ACTION ON AUDIT AND JOINT

BUDGET PROPOSALS

AUDIT

From legislative approval of administrative staffing as the Assembly's first action on the Citizens Commission report, two beliefs were confirmed: (1) the utility of a "carrot and stick" strategy in implementing recommendations for legislative media modernization and (2) the existence of tensions between the news media and the Legislature. Both these factors were present in the second major implementing phase of the report--approval by the Legislative Council of the proposal for a joint budget committee. This recommendation was a request for more effective performance by the Legislature in the field of public finance--another example of more work to justify benefits received through increased salaries and augmented staff. Also, the joint budget committee would be the means whereby more budgetary information would become available to the press and public through a year-round process by which the Legislature would involve itself in financial planning, an area traditionally dominated by the executive branch. Information about

the process would yield more complete, less superficial information about the budget than the results of a few "pro forma" budget hearings at the beginning of each session, the traditional General Assembly practice.

Pressure from within the General Assembly for additional oversight powers came during the session when, on March 25, Delegate Elaine Lady (R., Montgomery County) introduced a bill to provide for an auditor to determine whether State funds are being spent in accordance with legislative intent. The unique feature of her proposal was the transfer of this legislative function from the state auditor, an executive official, to an office appointed by and responsible to the General Assembly. The Lady Bill contained the basic features embodied in the Citizens Commission recommendation that proposed creation of the office of Legislative Auditor.¹⁹ The theory behind the bill and the Commission recommendation derives from the traditional separation of powers. As Mrs. Lady expressed it: "Under the present system, the Maryland Governor is, in fact, auditing his own Administration. Would we want a playwright reviewing his own play? The only way we know how the Administration is doing is because they come down and tell us they are doing a good job."²⁰

Essentially, Delegate Lady was recommending more direct application of the principle of separation of powers with reference to

¹⁹Ibid., p. 36.

²⁰"Own Audit Urged for Legislature," The Sun (Baltimore), March 27, 1967.

the financial audit of executive agencies' implementation of programs passed by the General Assembly. On June 6, 1967, she explained the details of her proposal to the Legislative Council Committee on Taxation and Fiscal Matters by asserting that the audit function is part of the proper role of the legislative branch of state government. "Particularly is this role important when the legislative post audit office would undertake periodic examinations of financial transactions of State agencies, conduct in-depth studies of performance of administrative functions in terms of quality and quantity, and detect the existence of overlapping operations," said Mrs. Lady.²¹

It was clear that the legislative functions outlined in the post-audit bill supported the principle of spending public funds in accordance with legislative intent. However, conflict arose with the executive branch through the assertion of State Comptroller Louis L. Goldstein that H.B. 93 represented an unwarranted duplication of services. According to the Comptroller, the operation of this bill would undercut the functions of the state auditor and his assistant who are certified public accountants and thereby professionally qualified to represent the public interests and serve both the legislative and executive branches. Goldstein, an executive branch official, saw the audit function as largely mechanical, and therefore not a violation of the separation of powers if

²¹Minutes of the meeting of the Committee on Taxation and Fiscal Matters, Legislative Council, Tuesday, June 6, 1967, p. 2.

lodged in the same branch whose agencies are being audited. The Comptroller also emphasized that "my audit's basic function is to examine the disbursements of all state funds for propriety, legality, compliance with various administrative rules, regulations, and directives."²²

What both Delegate Lady and Comptroller Goldstein failed to discuss specifically was the question of political power directly at stake in the audit function. Under H.B. 93, the General Assembly would be examining executive spending through its own source of information. The power accruing to the General Assembly would also derive from the independent nature of an audit based on actual performance and administration, as opposed to "in-house" examination of the executive branch's financial records by executive personnel. "In fact, the post audit function has been enlarged in 12 states to include (1) the study of specific problem areas of interest to legislators and (2) preparation of legislation as a result of the auditor's recommendations," according to Edward A. Rheb, staff associate of the Maryland Fiscal Research Bureau.²³

E. A JOINT BUDGET COMMITTEE

However, the enlargement of financial oversight by the Legislature would be only partially achieved through the audit function,

²²Interview with Louis L. Goldstein, Comptroller of the State of Maryland, June 5, 1967.

²³Minutes of the meeting of the Committee on Taxation and Fiscal Matters, June 7, 1967, p. 3.

according to the Citizens Commission recommendation which proposed the establishment of a joint budget planning committee,²⁴ as a necessary coordinating mechanism for any substantive changes in the power of the purse. The heart of that recommendation was the "legislative budget," a sort of alternative to the executive budget which would reflect the research done by the joint committee throughout the year. Because of the importance attached by both the Citizens Commission and Eagleton to a joint budget committee, final decision on a legislatively controlled audit was delayed until legislative council hearings could be held on the relationship of an auditor to year-round budget research.²⁵

As chairman of a special Taxation and Fiscal Matters committee to study the joint budget committee proposals, Senator Blair Lee (D., Montgomery County) prepared a comprehensive proposal in support of greater legislative initiative in financial matters. Lee is an example of the "specialist" or "inventor" in the legislative process, the politician who "does his homework" and who has found his niche in the General Assembly power structure. A defeated candidate for the 1962 Democratic nomination to the United States Senate, Lee has said that "the handshaking, TV-appearance politics

²⁴Citizens Commission Report, p. 333. The details of this recommendation and the philosophy behind it are explained in Chapter 7. Also, see Eagleton Report, pp. 191-192 for recommendations of a joint interim committee on finance.

²⁵In the author's opinion, a June decision on the proposed transfer of post-audit functions to the Legislature would have left the audit solely in the executive branch, primarily on the strength of Mr. Goldstein's suggestion "that the Legislative Council wait and see whether the Constitutional Convention makes the audit a legislative duty." Sen. Blair Lee, after a July 13 meeting with the author, prevailed upon the audit study chairman Sen. George Snyder to delay final action on audit until the joint budget committee recommendations had been reviewed on August 8-9, 1967.

doesn't appeal to me that much any more. I'd rather put the effort into new legislation that will have far-reaching effects on the state government. In this area of legislative-executive relations, there is much research and preparation to be done before the Assembly can be brought up to par with the Governor in terms of power, or even a level of understanding that goes beyond veering out of the way of oncoming traffic."²⁶

By "oncoming traffic," Senator Lee meant the technical advantages of staff, research information, possessed by the governor in preparing and justifying his budget. The Senator described Assembly budget hearings as "little more than a facade, a legislative attempt to assume comprehension of detailed agency requests when we know that no serious study of administration programs has occurred until they are present in 'fait accompli' terms for us to rubber stamp."²⁷

²⁶ Interview with Senator Blair Lee, July 13, 1967.

²⁷ Ibid. Concerning the legislative role ascribed to Senator Lee, see Wahlke et al., The Legislative System, pp. 254-266. Senator Lee would most likely adhere to the role of "inventor" discussed on pp. 254-256. Heinz Eulau, the author of this chapter, attributes the rise of the inventor in the legislative process in part, "to the technological development of society which has reached a scale where expert knowledge rather than lay enlightenment has become a condition of effective government" (p. 254). He notes that under these conditions, the individual legislator tends to become less the creator and more the register of public policy. The few legislators who desire to exercise power through expertise concern themselves with the details of legislation, and usually confine their expertise to specific areas such as finance, judicial matters, health, or education. In the author's opinion, Senator Lee is the classic example of the "inventor" as opposed to the other purposive role of "tribune," "broker," or "ritualist." Lee's area of specialization has largely been finance and taxation. (He is one of the authors of the 1967 Maryland tax reform law, publicly identified as the "Agnew-Hughes-Lee Tax Bill.")

The Lee memorandum to his special study committee was a criticism of the view that the executive should be the chief legislator in state government. Emphasizing that "the time has come to stop talking about the inadequacy of legislative review of the executive budget and do something about it," Lee reported that there were two chronic ailments in the Maryland Legislature's budget process:

(1) "The intense pressure of time, with only a few hours allotted to hearing immensely complicated financial requests of major departments, and proportionately less for the minor agencies.

(2) "An almost total absence of staff memoranda with respect to significant policy questions, alternative courses of action, cost projections beyond the coming year, evaluation of current or proposed programs, estimates of the possible advantages and disadvantages in Federal aid, or any other meaningful information that might help committee members make intelligent and independent judgments about the major policy issues inherent in any state budget in any year."²⁸

This memorandum was explicit in asserting policy-making authority over financial matters as a legislative right, as illustrated by Senator Lee's references to "policy questions," "lack of meaningful information" . . . for "intelligent and independent

²⁸Memorandum from Senator Blair Lee to members of the special study committee of the Legislative Council's Taxation and Fiscal Matters Committee, p. 1.

judgments." Implicit in the indictment of budget procedures was the senator's concern about the Legislature's bad public image--he described "the all too frequent proneness of committee members [during budget hearings] to wander far afield in pursuit of favorite projects and pet hates or to get too deeply involved in the minutiae of the budget. Since the big questions in the budget are often not plainly discernible, these sideline activities serve to fill the vacuum."²⁹

This concern about deterioration of the power of the purse opened up another strategy to the Citizens Commission--the "separation-of-powers" argument whereby reformers justify legislative modernization by comparing the weak position of the General Assembly in budget policy formulation relative to the executive branch. A version of the "carrot-and-stick" strategy--the method of comparing the Legislature's power with that of the governor--was effective primarily because of the impending Constitutional Convention whose delegates were generally believed to be executive branch-oriented and, indeed, somewhat distrustful of the Legislature. Therefore, the Citizens Commission could act with credibility as the reformer offering proposals to strengthen the Legislature's policy-making authority before the Convention gave greater reorganization powers to the governor.

In testifying before the Lee Committee (on August 9, one month before the opening of the Constitutional Convention), the

²⁹Ibid., p. 2.

chairman of the Commission recommended that authority to review the capital budget, as well as the program budget, be given the joint budget committee:

Such integration becomes increasingly necessary should the proposed fiscal sections of the Constitutional Convention Commission draft be ultimately adopted, particularly any proposed alteration of the special independent character of the Board of Public Works. The proposed charter removes the state treasurer, who is appointed by the Legislature, from designation as a member of that Board. It is our understanding that the Constitutional Convention Commission draft, in making the Public Works Board a sole creature of the executive, would necessarily prevent the Board from levying property taxes, and that all such appropriations would have to be made by the Legislature. Appropriation of funds to pay debt service on bonded capital improvements will have to be appropriated by the Legislature and consequently considered by the fiscal committees in conjunction with the executive budget. Logically, therefore, consideration of the capital and operating budgets should be in the hands of one committee, especially for interim session planning purposes.³⁰

Capital improvements can be a politically sensitive part of the State's one billion dollar budget, and its inclusion within the purview of a joint budget committee would strengthen the legislative oversight power under a new Constitution. Although capital appropriations might be reviewed by a statutory Board of Public Works, the Legislature could exercise its policy-making discretion through a joint budget committee, thereby offsetting any control assumed by the governor over a reconstituted Board.³¹

³⁰ Testimony of the author before the special committee (of the Legislative Council's Taxation and Fiscal Matters Committee) to study proposals for a joint budget committee, p. 4.

³¹ The specific proposal offered by the Constitutional Convention Commission was to remove any mention of the Board of Public Works from the Constitution, particularly the composition of the Board--the governor, the state comptroller, and the state treasurer who is appointed by the Legislature. This removal, combined with

Because a legislative representative on the Public Works Board was not specifically identified in the proposed Constitution, this practical argument for increased budget oversight was as compelling as any theoretical separation-of-powers justification.

In addition to reviewing the functions of a joint budget committee, similar to those outlined in the Citizens Commission Report,³² the Lee memorandum emphasized the separation-of-powers as a valid argument on its face. While recognizing that the executive department's Budget Bureau analysts examine the budget on a continuing basis, Lee maintained that review within that branch of government is not the same as legislative study. According to Lee, the difference lies in the natural loyalty that an executive agency accords the governor--"In September and October, the Bureau may examine Budget requests with dispassionate objectivity verging on hostility, but when January comes and the governor has proposed his budget, the Bureau and all other agencies are one big happy family with a common objective of getting the budget through the Assembly with as little damage as possible."³³

the proposed gubernatorial reorganization powers, would give the governor effective control over the Board, through the power to appoint a fourth member, thereby assuring control of its decisions. See Report of the Maryland Constitutional Convention Commission (King Brothers, 1967), pp. 151-153, and draft section 4.19, pp. 169-170.

³²Citizens Commission Report, op. cit., pp. 33-34. See Chapter VII for comparison of this recommendation with that of the Eagleton Institute.

³³Lee Memorandum, op. cit., pp. 2-3.

Recognizing that the executive budget can be used as an instrument of efficient management in the governor's hands, why did the Citizens Commission, the Eagleton Institute and Senator Lee believe that legislative review and adoption of the budget should be more than a perfunctory gesture? Rooted in history and Anglo-American jurisprudence, the answer is derived from years of conflict with the Crown by the English-speaking peoples to establish the right of their elected representatives to control the public purse. That conflict was won, and the principle has become firmly established that only the representative assembly can levy taxes and appropriate funds.

A more contemporary argument for increased oversight authority derives from the increased resources and information available to the executive branch and the corresponding need for a check against excessive initiatives or insufficient review within that branch. Prior to the August 9 hearing of Senator Lee's special committee, Mr. John Lauber, director of Governor Agnew's Task Force on Modern Management, emphasized the need for a legislative role in framing policy "established by a computerized, modern, and executive office." According to Lauber, "the only real examination of State spending will come from the establishment of a Joint Budget Committee to provide all legislators, regardless of party, with year-round information."³⁴ Lauber's credentials for making the assertion

³⁴Interview with Mr. John Lauber, August 9, 1967. The Task Force on Modern Management is a special administrative committee established by Governor Agnew to reorganize and make more efficient operations within the executive branch. It is a professional committee charged with implementing as well as recommending management improvement techniques.

were substantive--for five years he served under Governor Rockefeller in New York's Executive Department Budget Division, and subsequently as Fiscal Assistant to the Senate Majority Leader. In 1963, he came to Maryland as Director of Finance for Montgomery County and was appointed to the governor's staff in January, 1967.

The Lee memorandum drew upon the California experience, as had the Citizens Commission recommendation for a joint budget committee. In a letter to Mr. E. D. Hoover, Fiscal Analyst for the Maryland Fiscal Research Bureau, A. Alan Post, Legislative Analyst for the California Assembly, examined the relationship that exists in that state between two competing branches of government, particularly in reference to the Assembly's annual critique of the governor's budget:

Since organizationally my office is staff to the Legislature, we do not participate officially in the preparation of the governor's budget. However, analysis and evaluation is a continuous process. A continuing upgrading of background information, workload data and measurements, and accomplishment evaluations is required to permit final analysis of budget proposals with a minimum of delay . . . Relationships with the operating agencies and the Budget Division are not formalized, but as a practice we are furnished with copies of agency requests with accompanying justifications. Printers' galleys of the budget document, which reflect final budget decisions of the executive, are furnished in advance and permit from two weeks to one month analysis time prior to actual publication. Advance information on final budget decisions is treated in strictest confidence--not even discussed with legislative members of the Joint Budget Committee.³⁵

³⁵ Letter from A. Alan Post, Legislative Analyst for the California system Assembly, to E. D. Hoover, Fiscal Analyst for the Maryland Fiscal Research Bureau, Appendix A to Lee Memorandum, op. cit.

This unique relationship between the professional staffs of two branches of government provides the California Assembly hard financial data as background for legislative supervision of the executive's financial programs. In other words, the examining branch of government assumes an adversary relationship, in part, through transmittal of information by the branch being examined. The impact of the California system had been significant on the Citizens Commission recommendation, although Senator Lee recognized that the proposal might be complicated by being integrated with other Citizens Commission reforms affecting the legislative procedures during sessions and interim periods.³⁶

- (1) There should be created as soon as possible a Joint Legislative Budget Committee composed of approximately fourteen members, seven from the Senate Finance Committee and seven from the House Ways and Means Committee, with instructions to meet as frequently as necessary between sessions in order to build up a body of knowledge that can be used during sessions to enable the Senate Finance and House Ways and Means Committees to identify important policy questions in the annual operating budget and to render intelligent and independent judgments.
- (2) The present Joint Legislative Committee on the Capital Budget should be incorporated into the proposed Joint Legislative Budget Committee (or, failing that, very closely allied to it).
- (3) In accordance with the Lee Memorandum's emphasis upon quality and volume of staff work as a key to comprehensive budget analysis, the special committee recommended that the office of Legislative Analyst be appointed by

³⁶ Lee Memorandum, *op. cit.*, p. 8. Senator Lee was referring specifically to the Citizens Commission recommendation for year-round performance by all major committees, including the Joint Budget Committee.

and be responsible to the Joint Legislative Budget Committee, with salaries high enough to attract top talent and with a staff of approximately twelve professional and technical positions and sufficient clerical help. The chief emphasis of the staff work should be on budget-related research, and highest priority should be given to an analysis and critique of the budget, to be available as soon as possible after publication of the budget itself.

The Lee Committee expressed optimism that "a California-style arrangement could be worked out between the governor's office and the legislative analyst to give the latter a confidential preview of the budget galley proofs as soon as they are approved by the governor."³⁷

An obvious question arises about the relationships between the several committees currently working in the fiscal field and the several staff agencies serving the General Assembly. According to Senator Lee, this problem would have to be resolved by higher authority--the legislative leaders. But he cautioned against perpetuating or enlarging the present diffusion of responsibility.

Senator Lee's committee recommended that the Fiscal Research Bureau be developed into a Legislative Analyst office through increased staffing and research capability. Subject to the establishment of reasonable priorities, the legislative analyst should be available to the other fiscal committees for research investigations. For routine work on legislation that is not directly

³⁷Ibid., p. 10.

related to the budget, the Senate Finance and House Ways and Means Committees should be equipped with one or more full-time bill analysts (as distinguished from budget analysts), who could assist the Legislative Council and the Committee on Taxation and Fiscal Matters during the summer.

Lee's group completed its recommendations by recognizing the need for further reform through their "understanding that the recommendations of the Wills Commission and the forthcoming report of the Eagleton Institute would be placed on the agenda of the Legislative Council's Committee on Legislative Organization and Procedure, under the chairmanship of Speaker Mandel."³⁸

It was clear from its direct response to the Citizens Commission recommendation (the Eagleton Report had not been completed at the time of the Lee hearings, but its author, Dr. Alan Rosenthal, was present as an observer) and the California joint budget committee arrangement that the Lee Committee acted as the catalyst for bringing legislative modernization into the implementation stage in Maryland. Evidence of this role was Senator Lee's willingness to act on the Joint Budget Committee recommendation without waiting for decision on other Citizens Commission proposals to reorganize House and Senate committees. He later expressed a concern that "unless the Assembly took steps to reorganize itself before the convening of the Constitutional Convention, many delegates to that body would be strengthened in their assertions that

³⁸Ibid.

the Legislature was the most ineffective of the three branches. Our action was expected to stem the tide of Convention support for restricting constitutional powers of the Assembly while adding authority to the executive branch. No one could say that the General Assembly was unwilling to take steps to improve its internal operations. Hopefully this Joint Budget Committee decision, a post-audit procedure, and the inclusion of fiscal notes with all major financial bills would prove to the public that, in addition to increasing our administrative staffs, we were also concerned about increasing our efficiency."³⁹

From his nervousness about the image of legislators "lining their pockets with staff expenses" (see this chapter, supra) to his leadership in getting the Joint Budget Committee recommendation approved for Legislative Council action, Senator Lee had clearly attempted to balance legislative benefits with responsibility. The door for internal reorganization by the Assembly itself had been opened and it was now up to Speaker Mandel's Organization and Procedures Committee to begin comprehensive review of all modernization proposals including those to recognize committees.

³⁹ Interview with Senator Blair Lee, November 11, 1967, the day after his special committee's approval of the fiscal note proposal to require all spending and revenue bills to carry explanations and estimates of their fiscal impact. Also, see "Explanations Sought for Money Bills," The Evening Sun (Baltimore), November 11, 1967.

CHAPTER X

THE CITIZENS COMMISSION AND THE MARYLAND
CONSTITUTIONAL CONVENTION

A. THE MARYLAND CONSTITUTIONAL CONVENTION: BACKGROUND

September 14, 1967--Defender's Day--was the 155th anniversary of the historic defense of Fort McHenry during the war of 1812. On that day and amid colorful opening ceremonies in Maryland's State House, 142 delegates to the Constitutional Convention filed into their seats to begin another historic moment in the history of the Free State--the drafting of a new Constitution to replace a 100-year-old document that had been amended over 200 times and still contained provisions prohibiting dueling and regulating the ownership of slaves. Part of the Convention's assigned task was the writing of a new Legislative Article whereby the General Assembly could be strengthened and modernized in proper balance with the alterations being made in the other branches of the State government.

The Constitutional Convention was the successor to a preparatory commission chaired by Baltimore attorney H. Vernon Eney that began work on August 20, 1965, to prepare a draft constitution for study by a future representative convention. The Constitutional Convention Commission divided itself into committees to prepare

draft articles for each branch of the government, local governments, finance, and a Declaration of Rights. On September 13, 1966, a special referendum election was held to determine whether a convention should be called. The vote was 160,280 for, and 31,680 against a convention. The election of delegates to the Convention was held on June 13, 1967--that date would mark the last successful election in the process of Maryland's constitutional reform from 1965 to 1968. On May 14, 1968, the proposed new Constitution drafted by the Convention was defeated by a 366,438 to 283,048 vote. The causes and ramifications of this defeat will be analyzed in Chapter XII, but at least a partial examination of constitutional reform of Maryland government can be provided through the changes proposed for the Legislative Article, as well as the changes adopted and rejected by the Constitutional Convention.

B. THE COMMITTEE ON THE LEGISLATIVE BRANCH

Two weeks before the Convention convened in September 1967, the chairman of the Citizens Commission met with the chairman of the Constitutional Convention's Committee on the Legislative Branch. Francis X. Gallagher was a Baltimore attorney and prominent member of the liberal wing of the Democratic party which had been instrumental in the election of Joseph D. Tydings to the United States Senate in 1964. At this meeting, Mr. Gallagher emphasized that he believed the Constitutional Convention to be

an important phase of the general development of governmental reform in Maryland, both structural and political. He expressed interest in the work of the Citizens Commission both as one of its members and with reference to its constitutional recommendations. With the full force of his well-known sense of humor, the former member of the House of Delegates observed: "I have the old and new guard all under one roof in this committee--I hope we emerge with a report that will be accepted by the Convention and also to emerge relatively unscathed, physically and mentally!"

Delegate Gallagher was not offering merely a humorous prophecy. He conveyed the strong impression that as committee chairman, he would not hesitate to develop major constitutional alterations in the legislative process, or at least have them presented to his committee for discussion. He noted that the Citizens Commission recommendations had been predicated upon retention of a bicameral legislature, and improvement of the existing Senate and House. After extending an invitation to the Commission chairman to testify before the Legislative Branch Committee, Gallagher suggested "that you give thought to the merits of a unicameral Legislature because our committee will be looking at the most fundamental changes that can be made to improve this branch of government."¹

¹Interview with Francis X. Gallagher, Chairman of the Maryland Constitutional Convention's Legislative Article Committee, September 2, 1967.

Eight days after the Convention convened, two sets of reformers met--the Citizens Commission, represented by its chairman, who testified and answered questions for four and a half hours, and the twenty members of the Legislative Branch Committee. At this hearing, most of the problems in constitutional reorganization of a state legislature were presented and many disagreements aired. The attention of the Gallagher Committee was largely focused on three alleged problems: (1) the inefficiency of the General Assembly; (2) its failure to attract the most competent citizens to serve as delegates and senators; and (3) a lack of visibility that reformers believe is necessary to increase public understanding of the legislative process and develop more responsible legislative behavior. During the Constitutional Convention, the Committee considered these problems and drafted certain constitutional provisions to solve them. The process by which these provisions were prepared, including the debate and disagreements about the proposed changes, was a significant part of the politics of legislative reform in Maryland during 1967-68.

In his testimony before the Legislative Branch Committee, the Citizens Commission chairman reviewed the proposed sections of the draft prepared by the Constitutional Convention Commission and related each section to corresponding proposals of the Commission. It is significant to note that some of the principal sections exposed differences in approach and specific proposals between the two reform groups. In relation to these differences, two

generalizations are appropriate: (1) The Citizens Commission's constitutional recommendations were designed to increase legislative power by placing more responsibility upon the two Houses through removal of such constitutional provisions as length of sessions and salary amount. These improvements would be accompanied by administrative and procedural recommendations to require more comprehensive performance by committees and individual members (e.g., year-round committee meetings). (2) The recommendations of the Gallagher Committee were designed to place a relatively restrictive constitutional authority over the Assembly and, equally important, increase its visibility through consideration of a number of arrangements, including: reduction in membership size; creation of single-member districts; and elimination of one house, thereby creating a unicameral body.

It is arguable that there was an element of distrust of the Maryland legislative process, shown by some Convention delegates, particularly those who had not served in the Assembly or were not familiar with its procedures. The differing opinions on the proposed arrangements to be submitted to the full Convention engendered deep divisions on the Gallagher Committee and may even have had some effect on the ultimate defeat of the proposed new Constitution.

C. UNICAMERALISM V. BICAMERALISM

The testimony of the Citizen's Commission chairman began with an analysis of unicamerlism v. bicameralism, an issue that attracted greater attention at the Convention than during the Citizens Commission study of the Legislature. The Commission had predicated its recommendations upon a two-House Assembly, but also recommended that the Constitutional Convention "promulgate a proposal for a unicameral General Assembly."²

Several arguments must be considered in evaluating the unicameral-bicameral question. The basic ones in support of bicameralism are:

1. A bicameral legislature is part of the State's political tradition and has general public acceptance. It should be given an opportunity to prove its merits under reapportionment.
2. Two houses provide a technical review and tend to minimize careless legislation.
3. A second house provides a check on hasty legislation and on bills prompted by popular passions (the famous "cup-and-saucer" argument).
4. A two house system permits "graduation" from the lower to the upper house, and, therefore, aids in developing experienced legislators.

²Citizens Commission Report, p. 17. For a general analysis of the effects of unicameralism on the Maryland Legislature, see John H. Michener, "The Structure of the Maryland Legislature: Unicameralism v. Bicameralism," a report prepared for the Constitutional Convention Commission, February 14, 1966.

5. A bicameral legislature is more difficult to corrupt than a unicameral body because there is greater diffusion of special interest groups and lobbyists.

6. The bicameral legislature allows differing interests to be represented, such as rural and urban as well as diverse economic interests.

7. A bicameral system permits more lengthy examination of legislation that may be popular at the moment, but in the long-run, not in the best interest of the State.

The primary arguments for unicameralism are:

1. Reapportionment of state legislatures on the basis of the "one man, one vote" principle³ eliminates the traditional reason for a two-house Assembly in which one house is apportioned according to population and the other according to geography, although there have been efforts to have this principle modified--most notably through Senator Dirksen's efforts to call a national Constitutional Convention on the subject.

2. The "power" argument contends that a unicameral Assembly can act with authority and less divisiveness in interacting with an Executive Branch whose administrative power has grown by contemporary public demand for increased government services.

3. Membership in a unicameral legislature confers greater prestige than membership in a bicameral body, thereby encouraging

³See Reynolds v. Sims, 337 U.S. 533 (1964); Maryland Committee v. Tawes 377 U.S. 656 (1964).

more highly qualified persons to seek public office.

4. The "efficiency" argument states that the unicameral system requires more accurate study of bills because floor decision in a single house is final decision. Also, the traditional rivalry between the two-houses would end.

5. The "visibility" argument states that the persons for and against legislation, and their motives, are clearer to the public through a single house. Reporting of legislative activities and decision-making is easier. The public does not have to comprehend sophisticated political maneuverings when one house passes legislation and the other defeats it. The conference committee, whose secret sessions may constitute a "third house," is eliminated.

6. The cost of operating the General Assembly is reduced.

What the Gallagher committee had to consider was the effect of adopting a unicameral legislature on the strength of the State's government and its legislative branch. Analyzing the arguments in behalf of a single house, the Citizens Commission report had noted that, from a cost standpoint, complete modernization of a bicameral General Assembly might be difficult. That is, because of increasing taxes, it might be impossible to publicly justify the expenditure of more funds on legislative assistance in terms of staffing, physical facilities and committee records for two houses.

In addition, if unicameralism would significantly assist public understanding of the state legislative process and increase public confidence in and respect for the Maryland Legislature, then it should at least be examined by the Convention. In his testimony, the Citizens Commission chairman advanced the following arguments as criteria of "a new public confidence."

PRO-UNICAMERALISM:

Frankly, the loudest voices raised against unicameralism may be those of the politicians who are afraid of losing jobs and patronage--reasons which are not always articulated. It is high time that the State of Maryland tried to save some of its taxpayers' dollars; the suggestion that a bicameral legislature is necessary as a check and balance may be open to question. Further, careless legislation might be better avoided by providing the legislature with adequate staff assistance: the amount of "graduation" from the lower to the upper house is not that significant--witness several first-term senators in their 20's and 30's. A unicameral legislature by being more clearly in the public eye may be much more difficult to corrupt than a bicameral one. It may be possible to more clearly identify responsibility in a unicameral system.

The strongest argument in behalf of unicameralism is the one Speaker Jesse Unruh has used--"In the face of increased executive power, the Legislature needs to be encouraged to accumulate power through a single, identifiable house."⁴

PRO-BICAMERALISM: The Commission chairman continued his testimony by developing possible motivations behind

the loudest voices raised for unicameralism, which may be from those who believe that any change is good change, or from those who are attempting to create a new political power base for themselves by offering structural change as a cure-all--again, reasons that are not articulated. The

⁴George S. Wills, testimony before the Committee on the Legislative Branch, Maryland Constitutional Convention, p. 9.

suggestion that membership in a unicameral legislature confers greater prestige is at least open to question.⁵ Although a unicameral body may facilitate efficiency, cumbersome or devious internal rule of procedure may negate any efficiency gained. Neither has it been clearly shown that one house provides more thorough consideration of legislation. And, in the course of its study, the Citizens Commission has not found rivalry between the Senate and House nearly the deterrent to an effective legislative process as the lack of committee organization and productivity during and between sessions.⁶

Also, the chairman questioned whether lobbying would be reduced because numerically there might actually be more lobbyists per legislator in a single house.

The strongest argument for unicameralism is that it would increase the power of the Legislature in relation to an inexorable shift of power to the executive. The strongest argument for bicameralism is that two houses offer one more opportunity to weed out poorly conceived legislation and bills. (Speaker Mandel has emphasized that one of the most important jobs of the Maryland Legislature is "to weed out bad bills.") Also, the shift from two houses to one might create a major dislocation of the State's legislative process when other constitutional reforms were needed, as well as the political support for those Assembly reforms.

⁵The testimony of Dr. Eugene Wiegman, a specialist in the Nebraska unicameral system, before the Citizens Commission indicated that, although individual Nebraska senators achieve more public attention than they would have in a bicameral legislature, there had been a tendency for the Nebraska Legislature to attract primarily "older citizens, many retired, to public service"; pp. 63-64 of transcript, Citizens Commission Hearing, Washington, D.C., May 25, 1966.

⁶Wills testimony, op. cit., pp. 9-10.

The chairman recommended retention of the bicameral system primarily because the Citizens Commission recommendations had been predicated upon that system, and more importantly, because the Senate and House, if properly reorganized, could become a creative, efficient Legislature. Also, the two houses were symbolic of the General Assembly's "historic past."⁷ At this point in the politics of Maryland legislative reform, it was apparent that the support of legislative leaders was developing for major internal reforms, including budget oversight. Because the Legislature could function effectively with two houses, provided certain procedural and administrative reforms were adopted, it seemed better political wisdom for the reformer to acknowledge tradition by supporting bicameralism. He could, therefore, establish political credit in return for legislative support of other modernization proposals.

This tactic seemed to have added validity when three days after presentation of the Commission's views before the Gallagher Committee, House Speaker Mandel took a strong stand against unicameralism before the same Convention panel. He expressed the opinion that "a unicameral legislature is much more susceptible to control by lobbyists and the governor's office. As it is now, even a 'strong governor' gradually loses control of a two-branch legislature."⁸ The final recommendation of the Gallagher Committee

⁷For analysis of the value in retaining traditional legislative symbols, see Chapter VII of this dissertation and Davidson et al., Congress in Crisis: Politics and Congressional Reform, op. cit. pp. 52-62.

⁸"Mandel Asks 2-Unit Body," The Sun (Baltimore), September 25, 1967.

to the full Convention supported a bicameral system, "one of the principal reasons being the controversial nature of some of its other recommendations."⁹

D. THE SINGLE-MEMBER DISTRICT PROPOSAL

The balance of the chairman's testimony before the Gallagher Committee was essentially an analysis of the proposed Legislative Article sections, submitted to the Convention by the Constitutional Convention Commission (hereafter referred to as the Eney Commission, after its chairman, H. Vernon Eney). In several areas, the dynamics of disagreement emerged. In the Eney draft of section 3.04, "District Representation,"¹⁰ single-member districts are discussed in the context of the Legislature itself creating them. The "comment" on the draft section noted that "it might be desirable to establish a separate district for each delegate, but this has not yet been proven to be feasible. However, it might be practicable for the General Assembly to provide for single-member districts in the future, and this possibility should not be precluded."¹¹

⁹ Interview with Dr. Robert Loevy, research director, Committee on the Legislative Branch, December 1, 1967.

¹⁰ "At least one senator, but not more than two senators, shall represent each district. At least one delegate, but not more than six delegates, shall represent each house district," draft section 3.04, District Representation, Report of the Maryland Constitutional Convention Commission (King Brothers, 1967), p. 129.

¹¹ Ibid.

The political basis for the multi-member districts is a 1922 amendment to the Maryland Constitution that (1) permitted each county to retain at least one representative in the House of Delegates and (2) increased city representation by the creation of multi-member districts with as many as six to eight delegates from each district. By satisfying both the rural county politicians and the Baltimore City Democratic organization this arrangement stabilized the political power arrangement in the Assembly until the 1962 and 1966 reapportionment plans placed suburban counties in a position of greater numerical strength.

Perhaps the best political argument for the single-member district is contained in a debate among delegates from Essex County during the 1776 Massachusetts Constitutional Convention: "The rights and representation should be equally and impartially distributed that the representatives should have the same interests and views with all the people at large. They should think, feel, and act like them, be an exact miniature of their constituents. . . ."¹² The modern extension of this argument would be increased visibility of the legislator to his constituents because he is their only representative. This lack of visibility was,

¹²Gordon E. Baker, State Constitutions--Reapportionment (New York: The National Municipal League, 1960), p. 3. For contemporary argumentation in behalf of the single-member district, also see William J. Boyd, Changing Patterns of Reapportionment (New York: The National Municipal League), pp. 21-27.

according to the majority report of the Committee on the Legislative Branch, the primary disadvantage of the multi-member district.¹³

In his testimony before the Gallagher Committee, the chairman noted that the Citizens Commission had not seriously considered single-member districts "the essence of legislative modernization, because of the initiatives that must be taken by the Assembly leaders in internal reorganization and procedure. Primarily, a constitution must be flexible enough to permit a legislature to work its will, including creation of single-member districts if the membership itself sees fit by statute. As I have already stated, Senate and House districts should follow county lines where possible--a much more relevant factor in the identification by a constituent of where his district is and who his representative is."¹⁴

The Citizens Commission criticized "the tendency of the single-member district to encourage parochialism where a delegate is so closely linked to his district that he will follow their wishes, primarily because he is so visible. Particularly in Baltimore City is this problem acute, where a divided city-wide delegation is handicapped in fighting for State funds against

¹³Section 3.04 of the Eney Commission draft was replaced by Section 3.03 of the proposed Maryland Constitution: "The number of members of each house shall be prescribed by law, but the number of delegates shall not exceed one hundred and twenty, and the number of senators shall be one-third the number of delegates. Only one delegate shall represent a house district. Each senate district shall consist of three whole delegate districts."

¹⁴Testimony George S. Wills, Citizens Commission chairman, before the Legislative Branch Committee, September 22, 1967, pp. 3-4.

suburban county pressures."¹⁵ Vigorous arguments against this approach developed from the liberal wing of the Gallagher Committee. Delegate Clinton Bamburger (Baltimore City) maintained that the multi-member district device was designed to perpetuate "status-quo political machines in Baltimore City and Baltimore County where tickets can be organized and where weak, controllable candidates run into office on a 'slate.'" Although highly normative in tone, the Bamburger argument was partially correct in its reference to the "slate" method of running legislative candidates.

But it must also be recognized that both Baltimore City and Baltimore County are subdivided into districts, the latter having been done by reason of the 1966 State Senate reapportionment. No more than three delegates per district are allowed under this arrangement in Baltimore County, and the Citizens Commission recommended to the Gallagher Committee that "it consider the possibility of reducing the number of delegates in any one district from six or eight to three or four as a way of striking a reasonable medium between the single-member notion and requiring the voters, if they are to choose legislators intelligently, to familiarize themselves with as many as eight candidates."¹⁶

The disagreement over single-member districts at this hearing, and ultimately before the full Convention, pointed up a major problem facing the doctrinaire reformer. In his zeal to create

¹⁵Ibid., p. 6.

¹⁶Ibid., p. 4.

fundamental constitutional change for the Maryland Assembly by a provision that would directly alienate legislators with established power bases, he was endangering comprehensive governmental reorganization and the passage of a new State charter itself. This view does not deny the fundamental purpose of a constitutional convention, that of improving the basic structure of government through relatively substantial change. However, the single-member proposal was not a clear-cut reform issue, its principal weakness being a danger of increased parochialism and less concern for statewide matters by legislators with limited constituencies. There was also political distrust of the reformers' motives. Shortly after the Convention's 83-52 vote for the single-member plan, Attorney General Francis B. Burch stated that "many of the proponents of single-member districts were simply looking for future power bases of their own."¹⁷

One mistake made by the opponents of the Gallagher Committee plan cost the Convention a compromise plan of three to four delegates per district. According to Francis Gallagher, "The opponents thought they had the votes to beat my districting plan, even a compromise. On the floor, we were willing to accept a three-man district, but they were not. They simply miscounted and lost."¹⁸

¹⁷ Interview with Francis B. Burch, Attorney General of Maryland, January 14, 1968.

¹⁸ Interview with Francis X. Gallagher, August 8, 1968.

As to whether the single-member proposal had a decisive effect on the defeat of the proposed Constitution, Gallagher said, "This has not been clearly shown, although there were some political feathers ruffled." This being true, it is arguable that the Convention delegates in the majority did not calculate the unwillingness of political leaders in Maryland to respond to this particular change.

E. CONSTITUTIONAL LIMITATION ON THE
LEGISLATIVE SESSION

Certain other constitutional recommendations of the Eney Commission appeared to restrict legislative initiative in comparison to the added authority proposed for both the executive and judicial branches. Of greatest concern to the Citizens Commission was the inclusion of a constitutional provision specifying the number of days for each annual session.¹⁹ In its report, the Citizens Commission had recommended a ninety-day annual meeting "established by legislative rule," a time period to be established by the membership. The Commission considered session length a matter of management responsibility, not constitutional fiat.²⁰ In more simplistic terms, as expressed to the Gallagher committee, the

¹⁹ The relevant part of Draft section 3.12, Legislative Sessions: "The General Assembly shall convene in regular session on the third Wednesday of each year, unless otherwise prescribed by law, and may continue in session for a period of not longer than seventy days . . ." Report of the Constitutional Convention Commission, p. 137.

²⁰ Citizens Commission Report, pp. 15-16.

Citizens Commission position was: "You don't tell the Governor of Maryland how many days he should govern--why should that standard apply to the General Assembly?"²¹

The Citizens Commission did not believe that sessions should be unrestricted in length. A deadline in which the entire Legislature completes each year's work provides incentive to act on the governor's budget and keep bills moving out of committee. The Commission recommended ninety days as a reasonable time to transact legislative business, so long as that time was not made a rigid part of the government's basic constitutional structure. The bad effects of a legislature not completing business within a specified time has been shown by the General Court of Massachusetts which met for a full year in 1964, without even acting on the budget.

In its report, the Eagleton Institute observed that "in principal, no state constitution should include a provision limiting the length of the legislative session. This principle is supported by the American Assembly, the Council of State Governments and the Committee for Economic Development--all national groups organized for the purpose of encouraging the modernization of state governments in the United States."²² However, Eagleton recommended that "the new Constitution limit the length of the

²¹ Transcript, George S. Wills, Testimony before Gallagher Committee, op. cit., p. 21.

²² Chapter 2, "Time and Efficiency," Strengthening the Maryland Legislature: An Eagleton Study Report (Rutgers University, 1967), pp. 14-15.

regular session of the Legislature to ninety days."²³ This recommendation was predicated on "the past willingness of Maryland voters to increase the number of session days; the increased volume of legislation; and the new demands on the Assembly." The report noted that before 1950, regular sessions ran no longer than ninety days in odd-numbered years. A 1948 amendment added a thirty-day session in even-numbered years because of "the increase in the business of the State, especially the growth of state expenditures and the accompanying desirability of more legislative attention to the Budget."²⁴ In 1964, Article III, Section 15 was amended to provide for a seventy-day session each year.

Although Eagleton's reasoning was logical in the Maryland context, the Citizens Commission believed that elimination of a constitutional time limit would symbolize the drafters' recognition of legislative initiative. And, by implication, the Gallagher Committee would be recognizing the favorable response to reform exhibited by Assembly leaders during the August 1968 finance hearings on a proposed joint budget committee. The Commission's position was essentially that, in addition to assuming a heavier workload through reorganized committees, legislators should be given more constitutional freedom to manage the Assembly's internal operations. It did not seem that the majority of the Gallagher

²³ Ibid., p. 21.

²⁴ Bell and Spencer, The Legislative Process in Maryland (Bureau of Governmental Research, University of Maryland, 1963), p. 34.

Committee sufficiently recognized the need for that freedom of legislative action.²⁵

In another area, a restrictive approach was taken by the Eney Commission draft section on reapportionment, congressional and legislative districting. In its report, the Citizens Commission had recommended that the Legislature assume initiative for drawing up a reapportionment plan after each decennial census and, only if the Legislature fails to act, should the governor draw up a plan.²⁶ However, in his testimony before the Gallagher Committee, the Commission chairman noted that "the draft section seems to confuse and the 'comment' does not clarify exactly what degree of freedom the General Assembly will have in adopting reapportionment and redistricting formulae."²⁷ The first sentence in Section 3.03 states "that the governor shall present [emphasis added] to the General Assembly plans of . . . districting . . ." and the third sentence states that "the General Assembly shall enact [emphasis added] plans of . . . districting . . ."²⁸ It was not clear by

²⁵For an excellent summary of session length and salary policies in state legislatures throughout the United States, see Alvin Clark and Walter Nunn, "Sessions," Section Nine of Legislative Research Kit (The Citizens Conference on State Legislatures, 1967), pp. 3-23.

²⁶Citizens Commission Report, pp. 13-14.

²⁷Testimony, George S. Wills, before the Legislative Branch Committee, pp. 2-3.

²⁸Report of the Maryland Constitutional Convention Commission, op. cit., pp. 128-129.

that language whether or not the General Assembly may even introduce its own plan of reapportionment or districting, or modify the governor's plan. It was emphasized that if the Convention should decide to retain the initiative in the governor, the language should be clarified.

The "comment" on the proposed draft seemed to more clearly reflect the Eney Commission's thinking than the draft itself. According to the "comment," the governor is "directed" to present plans for congressional and legislative districting and reapportionment to the General Assembly three months after each decennial census."²⁹ It is further noted that, although the Assembly may adopt or modify the governor's plan, it must respond to that plan in preference to, or before, initiating its own.

The Citizens Commission recommendation clearly supported the principles of (1) legislative independence from the executive branch and (2) legislative responsibility within its membership to set policy. With respect to reapportionment, the argument ran as follows: Although reapportionment had become a fact of life in Maryland by 1967, a basic component of legislative responsibility lies in the Assembly's initiative to reconstitute itself periodically in accordance with the one-man-vote principle. The failure of the proposed Constitution to require this action might not be harmful from a technical point of view because deviation from

²⁹Ibid.

reapportionment standards has been limited mathematically.³⁰ Therefore, the Assembly would almost be performing a mechanical function.

However, by supporting legislative initiative in drafting a reapportionment plan, the Citizens Commission report emphasized that the separation-of-powers principle was at issue. As important was the willingness of the Constitutional Convention to grant the Assembly broad authority to manage its affairs, or, in this case, meet the requirements of a responsibility to act. Failure to meet that responsibility should in the case of reapportionment require that the Assembly accept the governor's plan. Initiative instead of reaction to gubernatorial authority would increase legislative responsibility and, therefore, public confidence, in the General Assembly.

Mr. Stanley Sollins, one of the liberal members of the Gallagher Committee, questioned whether the legislature could be depended upon to act responsibly in reapportionment matters. Another member, Dr. Royce Hanson, president of the Maryland Reapportionment Committee that had forced the issue through the courts (see Chapter V), noted that the Assembly's record had not been good in these matters. The Commission chairman disagreed by

³⁰For analysis of the Supreme Court decision to achieve a standard of mathematical precision in reapportionment see Robert G. Dixon, Jr., "Remaining Thorns in the Political Thicket: When is Equality 'Substantial'?" Democratic Representation: Reapportionment in Law and Politics, pp. 439-457.

noting that the Maryland Senate had been reapportioned in 1966 by the Assembly membership. He emphasized that hostility from the Assembly members might be directed at a Constitution in which restrictive Legislative Article provisions reflected an aura of distrust by Convention delegates.³¹

The Gallagher Committee supported the Citizens Commission in its recommendation and revised Section 3.03 to place the initiative for reapportionment with the Assembly, not the governor.

F. DYNAMICS WITHIN THE GALLAGHER COMMITTEE

From its hearings, the Gallagher Committee moved to internal decisions on the Legislative Article provisions it would recommend to the full Convention. These decisions did not come without division and conflict within the committee itself. While it is not necessary to analyze in detail the dynamics of disagreement among the members, geographical and philosophical differences were present.³² The membership of the Gallagher Committee approximated the geographical composition of the full Convention. Of the

³¹Mr. Larry Margolis, executive director of the Citizens Conference on State Legislatures, and that organization's field director, Mr. George Morgan, both recommended to the Gallagher Committee that the new Constitution omit any reference to legislative session and salary in order to provide the Assembly with freedom of action and to manage its affairs, and to place a higher level of responsibility upon the House and Senate Leaders. (Testimony given on September 26, 1967.)

³²For a detailed analysis of the inner workings of the Committee on the Legislative Branch, see research thesis by John M. Kirk and Mark L. Steinberg, Johns Hopkins University, May 1968.

Convention delegates, 74.1 per cent were from Baltimore City and four metropolitan counties, and 25.8 were from small counties. The corresponding Committee ratio was 75 to 25 per cent. Among the 20 members were 6 with legislative experience, 2 unsuccessful Congressional candidates, 9 attorneys, 3 professors, and a former judge. Three women served on the panel, including a professor's wife, a member of the Baltimore City Parks and Recreation Board, and a former Republican State Central Committee member. There was no lack of professional experience and knowledge about governmental affairs, although perhaps there were not enough legislators or former legislators on the committee.

The committee seemed to divide itself into three groups:

(1) The liberal faction favored single-member districts, a visible legislature reduced in size, and relatively restrictive provisions for length of session and gubernatorial initiative in drafting reapportionment plans. The liberals came primarily from Maryland's metropolitan areas. (2) A moderate group, somewhat more liberal than conservative, proposed a compromise plan to limit Assembly size with 35 senators to 105 delegates instead of the 40 to 80 maximum urged by the liberals. This group was also more disposed to compromise on the single-member district question. (3) The conservative faction was composed of a coalition of organized political interests and small rural counties. Its most vocal member was State Senator Fred Malkus (D., Dorchester County), who had been deposed from the powerful chairmanship of the Judiciary

Committee in 1966 after reapportionment had decreased his support in the Senate. Elected by his Eastern Shore constituents primarily to oppose the adoption of a new charter, Malkus damaged the cause of legislative modernization by generalized attacks upon any sort of reform. He also managed to harden the relatively rigid positions of liberals on such issues as single-member districts.

G. GALLAGHER COMMITTEE RECOMMENDATIONS TO THE CONVENTION
AND THE SPECTOR OF "REGIONALISM"

On October 26, recommendations for a ninety-day session and an annual salary of \$8,000 (as contrasted with the Citizens Commission recommendation of \$6,500) reached the Convention floor. A strong argument for the higher figure was the agreement between Chairman Gallagher and legislative leaders that the legislative pension plan would be re-evaluated in light of the higher base salary. Also, the Gallagher proposal rejected any per diem benefits to legislators, in support of the "visibility-of-salary" argument also endorsed by the Citizens Commission and Eagleton reports. As was the case with the session length limitation, the Citizens Commission had opposed a salary limitation in the new document. The final Gallagher Committee draft consisted of transition provisions for an \$8,000 minimum, permitting the Legislature to increase the amount by law.

It is interesting to note the role of the press in covering the Gallagher Committee recommendations as they reached the floor

of the Convention. On October 26, two days after the salary and length of session provisions were agreed upon, an article appeared in the Sun entitled "Convention Backs Regionalism. Revamping of General Assembly Heads Off Parochial Rule." Clearly supportive of the single-member district concept and reduction of the Legislature's size, the article (not an editorial) reported that "the movement toward regionalism and less parochial thinking in government was given a strong push forward this week by a sweeping restructure of the General Assembly from recommendations by the Constitutional Convention's Legislative Branch Committee."

"Regionalism" was itself a controversial issue that would inflame emotions and create public misunderstanding about its actual meaning during the March-May 1968 ratification campaign. Barely understood by the public, the concepts of "home rule," "regional government," and "annexation" were all working definitions in the relationship between the Legislature and the 23 local governments in Maryland. Home rule essentially shifted legislative and governmental powers from the Legislature to the county governments in Maryland by the mandatory date of 1970, thereby freeing the Assembly from excessive time spent in considering purely local matters. More important, home rule would direct the thinking of legislators to legislation of statewide concern. This new focus could have the side effect of reducing the amount of logrolling and local political influence on broader substantive issues.³³

³³For an accurate factual analysis of the different types of home rule in Maryland, including charter and code, see William T. Ratchford (former executive secretary of the Maryland Association

The power of the Legislature to alter county boundaries or "annex" one county to another was the same under the existing Constitution (Article 13, section 1) and the Convention's draft (Chapter 7, section 7.01) except that under the new document, annexation would not have been possible without the approval of the majority of persons in every affected county. Under the old Constitution, referendum was confined to the persons living in just the annexed areas affected by the merger. Under the new Constitution all the voters, not those in a restricted area in the county, decide whether the county boundaries shall be changed. This change was based on the theory that all people in any county would be affected by any change in its boundaries.

The question of popularly elected regional governments was entirely different from annexing a part of one county into another (because a new government structure or quasi-structure is created in a "regional government" and not in annexation). Under the Convention's draft Constitution (Article 7, section 7.08), the General Assembly may provide for referendum on a regional government law. Maryland's existing Constitution makes no provision for referendum and, by its silence, arguably gives the Legislature even more latitude in establishing a regional government. In endorsing the

of Counties), "Home Rule in Maryland" (June, 1968). For the arguments in favor of shifting the burden of local legislation from the Legislature to the local subdivisions in Maryland, see Craig Wanner, "Home Rule," a position prepared by the Citizens Commission on Maryland Government, September, 1968, and the Commission's final report, March 1969.

Convention's product on March 24, 1968, the Citizens Commission chairman said, "Not for one minute do I believe that our elected representatives would dare risk public censure by avoiding the referendum on this vital question. In the new Constitution, the Legislature is specifically authorized to sponsor a referendum on any popularly elected regional government."³⁴

Clear factual differences existed between home rule and regional government, the principal distinction being local autonomy for county governments under home rule. In spite of this distinction, the words "regionalism" and "regional governments" were used by opponents of the Convention to frighten the uninformed public. In some cases, Maryland politicians used these words to oppose the Constitution when the real reason was protection of vested political power that would be altered through removal of many minor local offices from identification in the new document. Cases in point included two counties that were adjacent to Baltimore City--Anne Arundel County Executive Joseph Alton hedged on support of the new document because of the "regionalism" issue, and Dale Anderson, Baltimore County Executive, openly opposed the document on this single question.

One of Anderson's local associates identified the practical problems facing the politicians in supporting the Convention draft: "Sure, we were concerned about the impact of regional government

³⁴George S. Wills, "Can a Complacent, Spoon-fed State Like Maryland Find Happiness with a New Constitution?" speech delivered in Baltimore, March 24, 1968.

on our people's thinking, but there was an equally bad problem-- most of Dale Anderson's political appointees would wake up the morning after the election and not know who they could talk to because their jobs had been eliminated or put under a State merit system."³⁵

By the time the Gallagher Committee recommendation reached the Convention floor, regionalism was beginning to flower as an issue for opponents of the proposed Constitution. Public trust of legislative modernization was weakened by editorializing in news reports, such as the Sun's identification of Legislative Article provisions with a broader Convention commitment towards regional solutions to Maryland's problems (see this chapter, supra).

At the time the Gallagher Committee proposals were being debated on the Convention floor, the chairman of the Citizens Commission warned that "distrust of the General Assembly entertained by some delegates to the Constitutional Convention could lead them to write a constitution containing an overly powerful executive branch."³⁶ Specific criticism was directed at the constitutional restrictions on the number of days the Legislature can meet and the constitutional provision for a salary: "When

³⁵ Interview with George W. H. Pierson, Councilman, 4th District, Baltimore County, July 3, 1968.

³⁶ "Legislative Fear Can Overdo Executive Convention Told," The Sun (Baltimore), November 7, 1968.

90 days and \$8,000 are fed into the Constitution as restrictions upon the Legislature, there is the implication of distrust. We have just as much to fear, or trust, in the office of governor, and even though a large grant may vest wisely under the leadership of an Agnew, Maryland must have some protection against future unstable or unwise power."³⁷

As part of the politics of reform, these remarks were not meant to oppose the Eney Commission's proposal giving the governor power to consolidate over 240 agencies, boards and commissions into 20 major departments. Rather, the Citizens Commission approach was designed to influence floor debate on the Legislative Article towards adoption of provisions connoting trust in the General Assembly. The tactic was also employed to maintain future credibility with Assembly leaders for Citizens Commission internal reform proposals that would be reviewed by those legislators after the Convention had completed its work.

As the Gallagher Committee made its case on the Convention floor, it became clear that the Cassandra-like warnings of the Citizens Commission were, in part, ignored. On November 11, after four days of debate, the full Convention approved by a 107-26 vote the Legislative Article provisions.³⁸ Included in those provisions were:

³⁷ Ibid.

³⁸ This vote did not reflect the margin by which individual Legislative Article sections were passed, such as single-member districts or size of the Assembly. The reasons for the different margins were that decisions on individual provisions were merely test votes, with the final binding vote taken on the entire package. That binding vote was designed to give the delegates who may have disagreed with specific provisions to support the entire Article if they so chose.

1. Retention of the bicameral Legislature.
2. Reduction of the number of members from 185 to a maximum of 160 (40 in the Senate and 130 in the House of Delegates).
3. Adoption of the single-member district plan.
4. Increase of the annual session's length from 70 to 90 days.
5. Authority for the Assembly to fix the salary of future legislators.

Except for the size of the legislature, the Convention, sitting as a committee of the whole, did not alter the recommendations of the Gallagher Committee, having voted down nineteen attempts to amend them. Approximately twenty-five hours of debate were consumed on the Legislative Article.

CHAPTER XI

CONTINUED RESPONSE BY THE LEGISLATIVE COUNCIL AND
GENERAL ASSEMBLY TO THE CITIZENS COMMISSION AND
EAGLETON REPORTS, NOVEMBER 1967 TO MAY 1968

A. THE POWER OF A BUREAUCRAT

As the public drama of the Maryland Constitutional Convention unfolded, the leaders of the General Assembly were initiating moves to implement a program of internal legislative modernization within the two houses. During November-December 1967 and the 1968 session, the role of House Speaker Marvin Mandel became more apparent as a prime factor behind the professionalization of the Assembly, and, through a series of subtle moves, Dr. Carl Everstine, director of the Legislative Reference Service, was emerging as a behind-the-scenes opponent of the Citizens Commission and Eagleton recommendations that could have the effect of diminishing authority and influence of his agency. (See Chapter VII for Everstine's testimony before the Citizens Commission.) Those recommendations were primarily in the areas of: (1) budget and finance where the establishment of a Joint Budget Committee would strengthen the State Fiscal Research Bureau, the other legislative research agency for the Assembly; and (2) committee reorganization where strengthened major year-round committees would operate as substantive study

panels between sessions with strong influence over legislation they send to the floor during sessions. Such reorganization has the potential to lessen the power of the Legislative Council over which Dr. Everstine's agency, as primary staff support, had great influence in research and bill content. This potential reduction of influence was also the impetus for his opposition to the Citizens Commission and Eagleton research administrative staff recommendations--proposals that would partially transfer authority over staff from the Legislative Reference Service to individual chairmen of new major committees.

Referring to the influence of a staff agency on the legislative process, in an article, "The Legislative Bureaucracy: Its Response to Political Change," Max M. Kampleman has noted that U.S. Congressmen and Senators, "instead of gratefully welcoming the establishment of a 'system' which would provide them with constant and ever-ready professional advice, acted as if they feared this advice and professional expertise."¹ Kampleman also observes that legislators come into the Congress as "masters of human relations, not as experts on governmental policy. They do not trust 'the professional know-it-all' and working closely with a staff member means revealing human weaknesses and political confidences. Thus, quite understandably, the legislator regards loyalty and friendship ahead of knowledge and expertness."²

¹Max M. Kampleman, "The Legislative Bureaucracy: Its Response to Political Change," Journal of Politics, XVI (August 1965), pp. 539-550.

²Ibid., pp. 543-544.

While Kampleman may have overstated the antipathy between legislator and professional, he at least points up the problem wherein the "aura of expertise" can hamper effective working relationships with the generalist, in this case the elected politician. In the author's opinion, Dr. Everstine, by a studied "folksy," homespun manner, has largely overcome the legislator's fear of the professional. Through careful cultivation of key members of the Legislative Council, he has acquired their trust and confidence in policy as well as in most research matters. The legislative reference director has also mastered a distinctive attribute which Max Weber identified with bureaucracy's principal influence on modern government:

The decisive reason for the advance of bureaucratic organization has always been its purely technical superiority over any other form of organization . . . The "political master" finds himself in a position of the "dilettante" who stands opposite the "expert," facing the trained official who stands within the management of administration.³

In the state legislative process, this relationship is especially apparent because of the limited sessions facing a typical House and Senate composed of "citizen legislators" who meet 90 or 70 days or less every year--or even every other year. Although the Maryland Legislative Council gives special attention to specific problems between sessions, the actual expertise they acquire in these matters is often funneled through Dr. Everstine and his staff simply because the Council members are not full-time legislators.

³H. H. Gerth and C. Wright Mills, From Max Weber: Essays in Sociology (New York: Oxford University Press, 1946), pp. 214, 232.

The Maryland Legislative Reference Service is not an agency which marshals powerful resources and funds to overwhelm the policy-maker.⁴ But through its year-round operation and research capabilities to process legislation as well as to exercise the power of advice and administrative discretion, this agency is the dominant force in the activities of the Council.

B. MANDEL COMMITTEE

As soon as the legislative leaders began to study Assembly reorganization, Dr. Everstine asserted his role as an expert to influence the decision-making process of the Legislative Council's Committee on Organization and Procedures, a unit set up especially to review the Citizens Commission and Eagleton reports. Although created by Speaker Mandel as a special committee, the study group (hereafter referred to as the Mandel Committee) was composed largely of Legislative Council members, some "influentials" in the Assembly, and those delegates and senators who had evinced special interest in legislative modernization, but held no particular leadership or committee post to entitle them to sit on the Council.⁵

⁴For useful general analysis of highly technically trained and politically influential agencies, see Amitai Etzioni, Modern Organizations (Englewood Cliffs, N. J.: Prentice-Hall, 1964).

⁵Included in the third category of "outsiders" not holding formal positions of power, but members of the Mandel Committee, were Delegate Paul Sarbanes (D., Baltimore City, 2nd); Delegate Werner Fornos (D., Anne Arundel); and Senator Roy Staten, who had chaired the special Senate committee to review administrative staffing in the 1967 session.

It was evident at the first meeting of the Mandel Committee on November 6, 1967, that Dr. Everstine had an ally in Senator William S. James, Senate President and also chairman of the Legislative Council, who was a strong advocate of retaining the Council as a substantive policy-making body. (See Chapter VII for analysis of Citizens Commission recommendations to strengthen the Council as an administrative, coordinating body--primarily a tactic to get legislative support for committee reorganization proposals while retaining the Council as a symbol of continuity and stability.)

Senator James opened the meeting by questioning whether "wholesale reorganization of the Legislature is really necessary until the Constitution is adopted." As a vice president of the Constitutional Convention, the Senator could inject an aura of authority on the efficacy of delay until the May 14, 1968, charter election. He also raised an objection to the utility of reorganizing the committee system if the Legislative Council were to be reduced in importance and assigned primarily "traffic cop" functions of routing bills to appropriate committees. In reference to the Citizens Commission recommendation for strengthening the Council in "areas of policy-making and coordination of year-round committee work," Senator James commented, "I wouldn't do it that way if I were doing it"; and to the Eagleton proposal for abolition of the Council, he doubted that "it's any better than what we've got."⁶

⁶ Senator James's observations are taken from the author's notes while in attendance at the November 6 meeting of the Mandel Committee.

His remarks paralleled some of the observations about the Legislative Council made by Dr. Everstine before the Citizens Commission. (See Chapter VII, supra.)

Both Speaker Mandel and Senator Blair Lee took more positive approaches toward professionalization in this first evaluating session. For the first time, Mandel emphasized his agreement with the Citizens Commission recommendation for individual committees operating on a year-round basis under administrative coordination of the Legislative Council. He also made clear his desire to see "more complete participation in committee work by all members of the Assembly." The James-Everstine concern that there were insufficient funds to pay legislators for interim committee service was countered by Senator Lee's suggestion that joint meetings would prevent duplicative sessions by Senate and House committees examining the same legislation.

In addition to broadening the participation of members, Delegates Myer Emanuel (D., Prince George's County) and Paul Sarbanes (D., Baltimore City, 2nd) noted that committee reorganization could be the stimulus for committees with relatively independent power bases to generate legislative projects and special studies on their own initiative.

This first session of the Mandel Committee in Annapolis was primarily a sparring match with different points of view being aired about the utility of major committee reorganization. Underlying the entire discussion was the nagging question of what the

Constitutional Convention would do with the legislative branch. The holders of legislative power would probably operate in a state of arrested development so long as the drafters of a new Constitution were meeting just two blocks away in the State House.

C. CONFLICTS-OF-INTEREST LEGISLATION:

A PARTIAL STEP IS TAKEN

Although the results of the Mandel Committee's initial meeting were somewhat inconclusive, it was clear that Dr. Everstine would be making efforts to influence the decisions made by that panel. It was equally clear that Speaker Mandel had decided to take initiatives he had only alluded to prior to November 6, although his proposal for the Eagleton Institute study could, in retrospect, be classified as a step in behalf of reform rather than direct competition with the Citizens Commission program. His stated objectives were committee reorganization, including a Joint Budget Committee, and the opportunity for full participation on committees by all legislators. Both these areas constituted major structural and administrative changes, respectively. But the question of legislative ethics had still not been met directly by the Legislative Council until a special Council subcommittee began studying the problem in October 1967.

On the matter of principle, there is little disagreement on the need for conflicts-of-interest legislation. The Citizens Commission recommended that "a strong, viable conflicts-of-interest

law applicable to members of the General Assembly" be enacted.⁷ The Eagleton Institute survey of Maryland legislators showed substantial agreement on the need for such legislation--the problem is one of definition and control. If conflicts-of-interest between a legislator's business or profit-making affairs on one hand, and his legislative responsibilities on the other can be identified, the matter of control becomes easier--assuming the legislator faces the issue honestly and is not seeking deliberate blurring of the law. Eagleton recommended a self-imposed legislative code of ethics regulated from within the Assembly. The Citizens Commission proposal on ethics was similar, but suggested that the attorney general's office be specifically empowered to advise legislators individually on whether a planned transaction may, in fact, be a conflict-of-interest. This recommendation was made primarily because "it is clear that all ethical questions may not have the clarity of black and white."⁸ Where the Citizens Commission took a further step than the Eagleton in definition was to identify situations where conflicts-of-interest might arise: (1) using knowledge gained through the Legislature to sell land for a profit to a State or private agency; (2) representing clients before the General Assembly, its committees and any State agencies, except courts; (3) accepting a bribe or failing

⁷ Citizens Commission Report, p. 47. See Chapter VII of this dissertation for analysis of conflicts-of-interest legislation in the context of public trust and confidence in Maryland's legislative process.

⁸ Ibid.

to report the offer of a bribe; and (4) engaging in any other illicit financial gain resulting from legislative service. The controversial part of the recommendation was its reporting standard where "legislators be required to report a detailed schedule of their assets (and those of their spouses and minor children) and a statement of their income by source to the Secretary of State. These reports should be made available to the public."⁹

On October 23, 1967, a Legislative Council subcommittee, chaired by Senator Paul Dorf (D., Baltimore City, 5th District), rejected two conflicts-of-interest bills which had incorporated the general standards drawn by the Citizens Commission. But this subcommittee took a delaying action by recommending that an ethics committee be empowered to investigate a question of ethics only when the legislator allegedly involved raised the issue himself. In spite of the fact that the Dorf Committee had approved no code of ethics for legislators, that same panel drafted a requirement that the governor prepare a code prohibiting conflicts of interest by officials and employees of the executive branch. Instead of strictness and enforceability, the standard for legislators was a more lenient one. As expressed by Senator Dorf, "These recommendations represent a milestone, because this is the first time a Legislative Council has ever recommended a conflicts-of-interest bill that has a chance of passage."¹⁰

⁹ Ibid.

¹⁰ "Legislative Panel Backs Ethics Plan, But Rejects Proposals Pushed on Conflict of Interest," The Sun (Baltimore), October 23, 1967.

By setting the standard as "feasibility of passage," the subcommittee had weakened its report to the Legislative Council. In a decision that more squarely met the issue as presented by both Eagleton and the Citizens Commission, the Council subsequently drafted a bill which would make it mandatory for all legislators to make public all financial dealings they have with the State or any of its agencies. According to the Council's revision, the legislator's report would have to be made on an individual basis to a joint Senate-House committee on ethics--a more stringent step than the voluntary submission of a legislator's financial dealings, but protective from general public scrutiny. Although the legislator's financial report must include provisions of a contract, including fees and salaries charged, no penalties for violation were spelled out, these standards being left up to the Committee on Ethics. According to House Judiciary Chairman Thomas Hunter Lowe, "This is about as strong as a bill regulating legislative conduct can go and still have any chance of passage."¹¹

Why is there a reluctance for legislators to act on conflicts-of-interest legislation when it is clearly a part of the trust or confidence that a State assembly can earn? In this sensitive area an important part of the representation function is at stake, particularly the issues of (1) how much should public obligation restrict private activity? and (2) will legislative reorganization fail to gain public confidence if it does not include regulation of legislators' personal and business conduct?

¹¹"Legislator Bill Pushed. Conflict-of-Interest Plan Clears Legislative Council," The Sun (Baltimore), November 1, 1967.

Of all the legislative reform reports examined by the Citizens Commission, the Citizens Advisory Committee of Washington State has offered the most comprehensive analysis of the conflicts-of-interest problem. From the concepts embodied in the Washington report, the Commission adopted its recommendation for "a Board of Ethics to receive complaints or charges against members, officers, and employees of the General Assembly concerning violations of a 'code of ethics' to be established by the General Assembly."¹² But more important than the duties of the Board is the practical application of a conflicts-of-interest law and its impact on the conduct of the individual legislator. From Mr. Charles Horowitz, chairman of the Washington panel and a lawyer who professed "sensitivity to the conflicts that a professional or businessman may be faced with in state legislative duties," three key areas were developed which a meaningful conflicts law should cover.

1. The law should be relatively restrictive in scope and specific in denomination--that is, legislators and officers of the Assembly should be specifically identified in the bill. This disclosure provision should apply to all legislators, but particularly to those who are employed by clients who do business with the government or whose businesses are affected by government regulation--occupations such as real estate, law, or insurance. (Note: The

¹²Citizens Commission Report, pp. 47-48.

Citizens Commission did not single out any particular occupations in its disclosure recommendations because the legislators who would represent clients were identified in the provisions prohibiting representation of those clients before the Assembly, its committees, and any State agencies, except courts.)

2. The law should provide for the reporting of financial interests as of a given uniform date and for reporting of major "in-out" transactions within a reasonable time before and after that date. Bank accounts and accounts in savings and loan associations, insurance policies, accounts in credit unions, and other similar plans for savings purposes (as opposed to investment) should not be subject to reporting. These exceptions are to provide the legislator some measure of privacy in financial areas that can reasonably be assumed to relate to family savings or insurance, and not ordinarily correlated to pecuniary advantage gained from "inside" legislative information.

3. The law should provide a method, similar to that of the Internal Revenue Service, of checking the correctness of reports filed.¹³

On opening day of the 1968 session, the General Assembly unanimously approved the establishment of a "Joint Committee on Ethics," in accordance with the Legislative Council recommendations.

¹³These three basic components of a conflicts-of-interest law were developed in an interview with Mr. Charles Horowitz, chairman of the Washington State Citizens Advisory Committee to the Washington Legislature. The interview was conducted at the annual convention of the National Municipal League, Boston, Massachusetts, on November 17, 1966, where Mr. Horowitz and the author participated in a panel on legislative modernization.

The fundamental difference between the Maryland Legislature's self-regulation of members' conduct and those recommendations offered by the Citizens Commission and Mr. Horowitz's Washington Committee is the lack of public disclosure in the former. In the author's opinion, the pressures for reform in this area were weakened by the Eagleton Report's lack of specificity.¹⁴ As has been the case with many states, the aroma of scandal has occasionally permeated Maryland legislative chambers. The savings and loan scandals involving House of Delegates leaders were a major cause of public news and media support of reform proposals. Also, legislative reluctance to regulate or eliminate slot machine gambling has impaired public confidence. "It is in the area of individual conduct that public confidence in a state legislature can be undermined as quickly as any procedural or organizational deficiency," according to Larry Margolis, executive director of the Citizens Conference on State Legislatures.¹⁵ As reasons, he cited "the public's natural interest in scandal or human mistakes. Difficulties that focus on the person are always of greater concern to the public and press than the more impersonal institutional problems."

¹⁴See Eagleton Report, pp. 228-229.

¹⁵Interview with Larry Margolis, February 15, 1968.

D. SPEAKER MANDEL'S HOUSE COMMITTEE

REORGANIZATION, JANUARY 1968

Although the Legislature did not pass a rigid conflicts-of-interest law as hoped for by the reformers, House Speaker Mandel moved quickly on the January 18 opening day to reorganize all House committees. In this second move, more sweeping than his first on May 25, 1966 (see Chapter VII), Mandel reduced the number of standing major committees from nine to four. The major and minor committees abolished were Agriculture and Natural Resources; Alcoholic Beverages; Banking, Insurance, and Social Security; Chesapeake Bay and Tributaries; Civil Defense; Education; Metropolitan Affairs; Labor; Motor Vehicles; Prison Administration; and Veterans, Militia, and State Police. The new committees included Economic Affairs and Natural Resources which, added to Judiciary and Ways and Means, made a total of four.

In a January 1 preview of the Mandel Committee changes, political columnist Frank De Filippo focused on the methods employed by the Speaker and the political impact of his decision¹⁶-- these dynamics were more significant for the politics of reform than the mere numerical reduction of those committees which would operate during each session. (For decisions made on committee activity between sessions, see the analysis of Legislative Council deliberations from July to September 1968 in Chapter XIII, infra.)

¹⁶ Frank De Filippo, "Maryland House Faces Major Reorganization," Baltimore News-American, January 1, 1968.

In essence, Mandel adopted the recommendations of the Eagleton Institute when he added the Economic Affairs and Natural Resources committees to the finance and judiciary panels. The Citizens Commission recommendations of (1) Education, Health and Welfare, (2) Business, Labor and Commerce, and (3) Transportation, Public Works and Metropolitan Affairs were all placed under the umbrella of Economic Affairs.

De Filippo described the Speaker's method as "notification of the changes in letters being mailed out today over the signature of Speaker Mandel." In commenting on the political impact of Mandel's decision, he stated that "technically, the changes are being recommended by the House Committee on Organization, headed by Mandel, and must be adopted by the House's full membership on opening day. In the unwieldy and uproarious House, where committee chairmanships are symbols of status, the abrupt changes in structure are sure to cause widespread discontent, especially among large county and Baltimore City lawmakers who now dominate the Legislature."¹⁷ Clearly, the political implication in this phase of House reorganization was the power of Marvin Mandel.

Swiftness and relative surprise are characteristics of the Mandel operating procedures. It appeared that discussion at the Mandel committee's November 6 meeting was speculative and decisions only tentative partially because of the reluctance of Senator James and Dr. Everstine to lessen the Legislative Council's power.

¹⁷Ibid.

However, it was Mandel's expressed desire for full legislative participation on committees that had actually carried the day. However, in typical Mandel fashion, the day had been carried behind closed doors--as the Speaker later confirmed. "After that meeting, I felt it was time to take a clear step in committee reorganization so that the House could parallel the Senate arrangement. We rounded up the votes on the committee, and the job was done. If I had the support of those people, the rest of the House would fall in line. I don't see any sense in advertising changes in advance, where people's power may be affected and opposition can build up. Anyway, I had the support of the respected members of the House, and that was the necessary green light."¹⁸

The Mandel methodology contrasts sharply with the procedures followed by the Constitutional Convention's Committee on the Legislative Branch whose public deliberations were subject to broad comment and criticism as they were presented and converted to formal recommendations before full Convention. Mandel's success was testimony to effective politics of reform when exercised by a holder of political power who is willing to move decisively after he has developed a consensus for change.

The Mandel decision did not, however, prevent disagreement from a House member who was publicly known as a "reformer." Delegate Walter Orlinsky (D., Baltimore City, 2nd District) was an

¹⁸Interview with Speaker Mandel, January 5, 1968.

active supporter of the Citizens Commission report, and when elected to the House in 1966, was appointed chairman of the House Metropolitan Affairs Committee, a unit created by the first Mandel reorganization plan in May 1966. Delegate Orlinsky observed that the 1968 committee reorganization, "although probably needed, may be Mandel's way of restricting people like me who attempted to block his nomination of Dale Hess as Majority Leader last year. My Metropolitan Affairs chairmanship is now eliminated. This may not be as much a question of reform as power and control. Yet I realize that Marvin gave me the job in the first place."¹⁹

The Orlinsky observation also raises the question as to what extent legislators become "socialized" and a part of the legislative system once they have been elected. If they become the beneficiaries of an existing establishment and rules of procedure, will they be less desirous of change than before they entered the Legislature? A simplistic answer is "power corrupts" but the relationship between a legislature's leaders and its members is crucial to an understanding of receptivity to reform of the system itself. Certainly, any change in the status quo of a state legislature, including change in its organization or rules, may affect

¹⁹ Interview with Delegate Walter Orlinsky, January 18, 1968. The "Dale Hess incident" to which Orlinsky referred was an abortive attempt by House freshman in the liberal wing of the Democratic party to block the Mandel nomination of Delegate Dale Hess as House Majority Leader. However, Delegate Paul Sarbanes, one of Mandel's principal backers in the 1968 committee reorganization plan, had been the candidate in the liberal forces to succeed Hess in the 1967 session. Sarbanes held no committee chairmanship, as did Orlinsky, leaving the inference that Orlinsky's concern was the political impact of the Speaker's decision to eliminate his Metropolitan affairs chairmanship, by virtue of that committee being absorbed into Economic Affairs.

the structure of that system. Reforms that may be seen as directly altering the composition or operating methods of the leadership are likely to be the most difficult to secure. And as Delegate Orlinsky implies, if the leadership has been generous to its members under existing procedures, then even the most reform-minded legislators may be reluctant to "bite the hand that feeds them."

General reaction within the House of Delegates to the Mandel Committee reorganization plan was favorable, largely because the key members of the power structure supported the change. Two members of the House leadership group, House Ways and Means Committee chairman William Houck and Judiciary Committee chairman Thomas Hunter Lowe, did not see the reorganization as reducing the power of their respective committees.²⁰ It is also interesting to note that Delegate Orlinsky (not a member of the power structure) did not make public his criticism of the sweeping committee changes to the full House membership on the opening day of the 1968 session.

If agreement can be reached by the leadership of a state legislature on a policy question, whether it be a bill or a recommendation for internal reform, to what extent will the membership follow? John C. Wahlke and LeRoy Ferguson have related conformity

²⁰Telephone interviews with Delegates Houck and Lowe, January 2, 1968, the day after the announcement of the Mandel Committee reorganization plan by Frank De Filippo in the Baltimore News-American, op. cit.

and cooperation within a state legislature to a concept called "rules of the game."²¹ It was evident that Orlinsky did not conform by participating in the abortive attempt of the freshmen liberals to oppose the Mandel choice of Majority Leader during the 1967 session. As analyzed in Chapter II, certain patterns of cooperative behavior do develop in a legislature, among them performance of obligations, reliability of verbal commitments, maintenance of confidences, respect for other members' prerogatives, self-restraint in floor debate and committee conduct, and a willingness to defend the system and adapt to the environment. Conformity to these patterns of behavior tend to increase a member's influence in the legislature.²²

Delegate Walter Orlinsky was clearly on the horns of a dilemma because of (1) his public statements in support of legislative reform and (2) his obligations to Speaker Mandel for appointment to a committee chairmanship as a freshman legislator--both reasons for acquiescence to the 1968 committee reorganization which would, in effect, abolish that chairmanship. In addition, Orlinsky, characteristically a non-conformist and liberal delegate, had to

²¹Wahlke et al., The Legislative System, pp. 141-169.

²²Ibid. For the relationship between interaction, in the form of cooperative behavior patterns, and influence, see Wayne L. Francis, "Influence and Interaction in State Legislative Body," American Political Science Review, pp. 953-960. Both character and conduct patterns, as well as specialization in a legislative field, are viewed as enhancing the credibility of a legislator with his peers. The study was based on interviews during, and observations of the 1961 session of the Indiana Legislature.

play "the rules of the game" to balance out his public opposition to the Speaker's majority leader nomination a year earlier during the 1967 session.

With legislative support behind the Mandel committee reorganization plan, it was necessary for the Citizens Commission to consolidate its efforts for further legislative and Constitutional Convention action on its proposals. As a tactic in the politics of reform, that consolidation would be aided by public recognition of the reform initiatives taken by the Assembly leaders.

It was also necessary to remind Assembly and Constitutional Convention leaders that the public was also aware of desirable reforms that had not been implemented. In another version of the "carrot-and-stick" method analyzed at the beginning of this chapter, the commission chairman granted an interview in the Washington Post on January 9, 1968--the first anniversary of the publication of the Citizens Commission "Report to the General Assembly and the People of Maryland." Correspondent Jack Eisen clearly correlated past accomplishments to necessary future actions, and his article illustrated a method by which the Citizens Commission sought to maintain public support for legislative reform.²³

As a tactic in the politics of reform, publicity can be a powerful weapon. And in the context of the Washington Post article, publicity about the successes and failures of Maryland's Assembly

²³The full article is reprinted in Appendix D.

reorganization was designed to put a political elite--the legislative leadership--on notice that the reformers were still actively seeking implementation of their recommendations.

CHAPTER XII

THE FAILURE OF MARYLAND'S REFORM POLITICS IN 1968:

THE DEFEAT OF A NEW CONSTITUTION

A. WHY WAS THE MARYLAND CONSTITUTION DEFEATED?

As noted in Chapter VIII, the year 1968 began on an "upbeat" note for nonconstitutional reform of Maryland's General Assembly. Speaker Mandel's committee reorganization plan offered promise of real change, and his commitment to hold hearings after the May 14 Constitution referendum indicated that a substantive review would be given Citizens Commission and Eagleton recommendations for professionalization of the Legislature between sessions. But, because of the conclusion of the Constitutional Convention and optimism about the forthcoming ratification on May 14, nonconstitutional reform shifted to a state of arrested development for the first six months of 1968.

As legislative modernization proposals were being evaluated by the Mandel Committee, two different strategies were being developed by supporters of the new Constitution to gather public support for the document. Different in concept and implementation, these strategies were to have broad implications for the politics of reform:

1. An educational approach whereby the mass public is persuaded to accept governmental reform on its intrinsic merits, and upon the recommendation of a well-informed elite of Convention delegates and prominent citizens in the professions and business.
2. A more pragmatic method of operation, attuned to practical political pressures, designed to overcome the fears of an apathetic electorate traditionally reluctant to accept change.

The former method generally typified the strategy and tactics of the Constitutional Convention's leaders and managers. The latter strategy was generally employed by the Citizens Commission and Eagleton Institute in getting their legislative recommendations implemented. In the election campaign for a new Constitution, the Commission continued to use this method, as did certain isolated political leaders who paid more than lip service to the document. Although the proposed Maryland charter offered basic structural change for all three branches of Maryland Government and was, therefore, more comprehensive than the 1966-68 General Assembly studies, a comparison of approach is useful to further understand the politics of reform. As noted in Chapter X, certain substantive differences emerged between the Citizens Commission and Gallagher Committee on constitutional recommendations, but more important was the difference in approach between the two groups. There appeared less willingness to compromise by the majority of

the Legislative Branch Committee, an insistence that the new constitutional framework of the Assembly remain simon-pure and untainted by political implications.

In December 1967, two seemingly isolated and minor events brought the Citizens Commission into conflict with the leaders of the Constitutional Convention about the best method to develop public support for the proposed charter. The responses by both reform groups to these events could be considered manifestations of the preceding strategies. During an address before the annual convention of the National Municipal League in Milwaukee, Wisconsin, the chairman of the commission criticized a decision made by the Maryland Legislature, on the advice of the Constitutional Convention preparatory commission, to hold a special May 14 election on the ratification of a new charter. The rationale behind the criticism was that the new Constitution might be rejected if it were the sole issue on the ballot, subject to intense focus by a powerful opposition that had already begun to build throughout the State. The chairman also suggested that an issue as important as a new framework of government should be decided by as many citizens as possible, in the best democratic tradition. Based on the relatively low turnout of voters for the June 1967 election of delegates to the Convention (20 per cent), a small vote could be logically anticipated in an issue-oriented referendum without candidates and the usual political motivations for going to the polls.

In support of his position, the chairman cited the views of Dr. James Pollock, political scientist and a vice-chairman of the 1963 Michigan Constitutional Convention. A principal advisor to George Romney on that State's Convention and ratification campaign strategy, Dr. Pollock noted that Michigan voters approved a new charter by the narrow margin of 10,760 votes (810,180 to 799,420) in a special election where ratification was the only issue on the ballot.

If we had it to do over again, we would never have taken that risk. People are reluctant to accept wholesale change, and approving a written constitution has none of the appeal of endorsing a live candidate. I think the only reason Michigan voters endorsed the Convention's work in a special election was because the document was personified in a rising political figure--George Romney. Romney had gotten into politics by the "citizen route" of promoting a new modern, efficient, and politically clean constitution for his state's government. I believe that the margin of victory was supplied by those voters who were really voting for Romney.¹

Asked whether he thought the Michigan document would have fared better in a regular election, Pollock said, "Yes, in a general election, the voters will turn out in relatively large numbers, will be primarily concerned about candidates, and are more likely to allow a constitution to pass without much comment and opposition. The usual opponents will be too busy worrying about party candidates and patronage."

Because of growing opposition in Maryland among many politicians to the Legislative Article's single-member district provision, the Citizens Commission recommended that the Constitution

¹Interview with Dr. James Pollock, professor emeritus of political science, University of Michigan, November 19, 1967, at a Board of Trustees meeting of the Citizens Conference on State Legislatures.

vote be shifted to either the November 1968 Presidential election or be held one month after the Convention's adjournment. The rationale behind a February vote was to prevent the opposition from having time to build up a strong campaign against the delegates and their supporters who had worked with the subject six months. Also, it could be expected that, soon after the Convention's adjournment, the public would probably look with favor upon the conscientious efforts of the delegates and translate that sentiment into endorsement of their product.

Upon the chairman's return from Milwaukee, it was clear that the decision-makers at Annapolis were unwilling to revise the May 14 date. Convention President H. Vernon Eney emphasized that "part of the function of this ratification campaign will be to educate the general public about the complex and detailed changes that will take place in Maryland government. That will take time and couldn't be done in one month. Also, the importance of this decision by the voters would be lost in a Presidential election where the focus is naturally on national problems."²

Perhaps the real reason for retaining the special election date was best articulated by a Baltimore City delegate, John Carroll Byrnes:

The Convention leaders anticipated that only interested citizens would vote, as they had in the election of delegates. The political opposition probably couldn't deliver its people

²Interview with H. Vernon Eney, President of the Maryland Constitutional Convention, November 23, 1967.

on such an academic thing as a new Constitution. What seemed best for a "yes" vote was a controlled vote, a small turn-out by the well-informed voters who, being familiar with the advantages of modernized Legislative, Executive, and Judicial articles, would support the changes.³

Following rejection of the suggestion that the election date be changed, the Citizens Commission, primarily because of its support of the new draft's Legislative Article, took steps to encourage a ratification campaign that would employ sophisticated, "hard-sell" public relations techniques. This view was predicated on the supposition that the new Constitution would be approved largely on simplistic, and perhaps emotional issues designed to counter the political tactics of an experienced opposition.

In late December, the Citizens Commission chairman met with a special committee of the Convention, appointed to prepare a public relations program for the forthcoming campaign. On instructions from the Convention leaders, that committee evinced interest primarily in printed literature explaining each Article and an hour-long film on the work of the Annapolis Convention. The chairman expressed concern that without strong emphasis on the mass media to transmit very basic, understandable concepts, an "issues-oriented, printed-material campaign" would not reach the unsophisticated voter who could be swayed by emotional attacks on a complex document. The meeting concluded with the strong impression left by the committee that the campaign would focus in detail

³Interview with John Carroll Byrnes, delegate to the Maryland Constitutional Convention (Baltimore City, 3rd District), October 21, 1968.

on the issues and rely primarily upon local precinct efforts by the delegates and other new-Constitution supporters. It appeared that only secondary reliance would be placed upon a "hard-sell," mass media campaign.

In a series of case studies, Professional Public Relations and Political Power, Stanley Kelley observes that

the thinking and personnel of public relations have become a part of contemporary American politics. A chronological study of works on our political life would show the authors giving longer and more elaborate treatments to propaganda, the mass media of communication, and the strategies and techniques of campaigners and pressure groups. With the techniques have come the technicians: the propaganda function in politics has, more and more, moved out of the hands of the lay politician into those of the propaganda specialist.⁴

The complexity of government issues, particularly when they are not dominated by, or closely identified with, a candidate or specific event, generally do not relate to the citizen who is not a participant in, or careful observer of, governmental affairs. According to one public relations consultant, Leone Baxter of the famous Whitaker and Baxter firm in California, "It's because the public relations profession and its allied professions know something about presenting abstract ideas, in attractive form, to masses of people who are too occupied with their daily lives to think analytically on their own account, that the average man is in a position to know more about the trends of human affairs than ever before in history."⁵

⁴ Stanley Kelley, Jr., Professional Public Relations and Political Power (Baltimore: The Johns Hopkins Press, 1956), p. 2.

⁵ Leone Baxter, "Public Relations' Precocious Baby," Public Relations Journal, VI, No. 1, 22.

Miss Baxter's somewhat self-serving statement is correct with respect to the increasingly pervasive influence exerted by the propagandist and mass media over the public. However, she failed to note that the average man is also bombarded with a plethora of complex issues in the course of a political campaign that may confuse as well as enlighten. The sheer volume of information transmitted via modern communications tends to inform superficially and create public response based on the most simple, dramatic, or unusual presentation. This "fact of life" in the effective use of modern mass media has direct relevance for the politics of reform, particularly in state government where the issues for the average voter may not be as salient as in a Presidential election or national referendum.

The question of state government's saliency for the average voter has been the subject of disagreement,⁶ but it has been shown that the more simplistic an issue can be drawn for the voter, the more likely he is to respond to that issue. Two case studies from

⁶For an analysis of the view that, to the average citizen, an American state is of less concern than the national government, or even his immediate community or city, see Robert A. Dahl, "The City in the Future of Democracy," American Political Science Review, LXI (December, 1967). Also, see M. Kent Jennings and L. Harmon Zeigler, "The Saliency of State Politics Among Attentive Publics," a paper delivered at the 1968 annual meeting of the American Political Science Association. These authors examine saliency of state politics in reference to a number of factors, among them level of education, location of residence, region of the country, social class, and such political factors as inter-party competition and governmental expenditures in the state. The data are drawn primarily from the University of Michigan Survey Research Center's 1966 election study. The authors conclude that saliency of specific issues may vary, but that the states loom relatively large in the perspectives of the American people.

the Kelley volume appear relevant to the defeat of the proposed Constitution in Maryland. When the reformer attempts to "modernize" practices in government or develop support for a new program, he must be aware of a natural reluctance on the part of many people to accept change.

In an era of anti-communism and fear of big government, Whitaker and Baxter ran a three-year campaign (1948-51) for the American Medical Association against President Truman's proposals for a system of national health insurance. According to Kelley, the primary reason for the success of that campaign was intensive and effective use of the term "socialized medicine" with all the natural concerns it engendered about an all-pervasive government managing the private lives of a controlled public.⁷ The simplicity of that slogan assisted the AMA public relations team in organizing opinion against health insurance bills pending in Congress and stimulated direct intervention in primary and general elections to bring about the defeat of legislators who favored those measures.

Fear of increased governmental power is a key public attitude syndrome that should have been faced more directly by the Maryland Convention leaders. Also, the ability to create doubt, without the benefit of direct supporting evidence, is a powerful public relations technique. As early as January 1968, it was becoming clear that the very complexity of a totally new Constitution could

⁷Stanley Kelley, "Medical Economics and Doctor Politics," op. cit., pp. 67-107.

engender an amalgamation of minorities, each opposing the document for a different reason, which could defeat the work of the Convention delegates.

The nature of the Maryland voter, under stress in an emotional political campaign, is perhaps best revealed in "Merchandising Doubt," Kelley's compelling case study of the famous 1950 "cropped photograph" senatorial race in which veteran Senator Millard E. Tydings was defeated by political unknown John Marshall Butler.⁸ The relevance of the Tydings defeat to that of the Constitution was that both the senator and the charter were symbols of respectability: Tydings, a conservative Democrat with excellent political and social credentials; the new Maryland charter drawn up by a nonpartisan convention managed by the State's professional, business, and social elite. In both cases, the Maryland voter seemed willing to respond to attacks on the credibility of "the Establishment," and those attacks were part of a general "aura of doubt" about the credibility of the Constitution itself.

A major approach of the campaign conducted against the proposed charter was that it was "a plot for bigger government and control of the man-in-the-street by the privileged law firms of Baltimore City"--a broad generalization that was not specifically supportable by the facts. The proponents simply failed to fight this line of reasoning by a simple and equally vigorous campaign.

⁸Ibid., pp. 107-144.

Supporters of the new Constitution could have focused on two issues: (1) corrupt political machines were attempting to retain control of the State government, and (2) the only way to prevent the onslaught of bureaucratic national government was for Maryland to protect itself by rearming its own government structure. As a participant in Maryland's politics of reform, the Citizens Commission had, in large part, won the support of many legislators who opposed the Constitution by the simple public relations device of urging the General Assembly to protect itself against the increasing power of the executive branch of Maryland government.

In comparing the incremental method of reform used by the Citizens Commission with the voter's decision of complete acceptance or rejection of the proposed Constitution, several facts are evident. In this context, the "incremental" process means that modernization of the Legislature was being promoted on several fronts: with the legislators through hearings, a detailed report, and personal contact; with the public through the news media; with Convention delegates through analysis of its Constitutional recommendations; with local business and other interest groups through briefing sessions; and with the legislative leaders through an approach that called the public's attention to the problems of their branch of government and convinced them that the Commission was operating to assist, not attack, the Assembly.

"Incremental" also meant that the Commission was not trying to implement its program all at one time. Instead, the politics

of legislative reform should be staged and alternated from low to high, and then from high to low pressure as the response of legislators developed and their awareness of the recommendations became more acute. Evidence of this procedure is the "cooling off" period the Commission provided after each major reform was acted upon. After the joint budget committee proposal was adopted in August, the Commission did not move publicly until its activities at the Constitutional Convention. Following intensive contact with the Gallagher Committee in September, little pressure was applied until the Mandel Committee met in November to act on committee reorganization. And because of the Constitution's defeat on May 14, the Citizens Commission did not press for implementation of its between-sessions committee reorganization until late August 1968.

Rejection of the Constitution was the final act in a long drama begun by the Eney Commission's drafting process, carried forward by the Convention, and completed by the ratification campaign. Despite a three-year program and presumed awareness of the public, voters were still being asked to decide upon major governmental change by a single "yes" or "no" vote.

Because the "no" vote carried by a decisive 366,438 to 283,048 margin in a period of time when governmental reform was making progress in Maryland, it is useful to analyze constitutional revision in relation to legislative modernization efforts that began with reapportionment in 1962. Clearly, the reasons for the new charter's defeat were more complex than just a failure to employ incremental tactics or have the document decided by article referendum.

The seeds of defeat were sown during the campaign for ratification and even earlier during the Convention. As noted in Chapter X, organized pockets of opposition developed against the proposed Legislative Article, particularly its single-member district provision. Similar opposition among some elected political leaders developed against the recommendation for gubernatorial appointment instead of public election of the attorney general and comptroller. The latter recommendation, submitted by the Executive Article Committee, created for the opposition a dangerous issue--that the drafters of the new charter were trying to remove government from the people by removing their right to elect two of the three highest elected officials in the State.

But the issue of appointment v. election was not nearly as critical to executive branch modernization as granting the governor authority to reorganize over 240 agencies and bureaus into twenty major departments. Although pressure from Attorney General Burch and Comptroller Goldstein caused the Convention to abandon the appointment procedure, it became apparent that important political support had been drained away when it would be needed to mobilize the electorate for charter revision. A case in point was Goldstein's position of "no position in support of or against passage of the new Constitution."⁹

Political support of a grass-roots nature was also lost when the relatively minor offices of sheriff and clerk of the court

⁹The Sun (Baltimore), May 6, 1968.

were removed from identification in the proposed Constitution. It was probable that these offices, part of the lower-echelon administrative machinery of local governments in the State, would be retained by implementing legislation, once the new charter had been passed. However, their removal from constitutional status was a heavy price to pay in subsequent attempts to obtain the support of these office-holders who, in some cases, were relatively influential in their communities. In retrospect, the removal of these offices from the draft, and subsequent alienation of the individuals who held those offices, appeared to damage the more essential areas of constitutional reform contained in the new charter, such as executive reorganization and mandatory home rule.

As early as April 2, six weeks before the special election, certain warnings appeared on the horizon, indicating opposition to the work of the Convention delegates. A major effort of the "PRO-CON" campaign, organized by Convention President H. Vernon Eney and his associates, included public endorsements of the proposed Constitution by prominent Marylanders, including many who had not been active in State politics or the drafting of the document. The focus was frequently on "prominent names"--respected citizens whose general credibility would purportedly enhance chances of passage, if the general public were aware of their support. One such individual was Dr. Milton S. Eisenhower,

President Emeritus of the Johns Hopkins University, who served as an honorary chairman of "PRO-CON."¹⁰

But, as the May 14 election returns indicated, endorsements by prominent Maryland citizens had not stemmed the tide of voter sentiment against this broad-scale governmental reform. The Washington Post put it bluntly:

The defeat of the proposed Constitution for Maryland can be laid to any number of factors--opposition by the bureaucrats of politics, false claims made by those who urged rejection, fear of change, rural opposition to ideas nurtured in urban and suburban areas, opposition to specific items. None of these alone is adequate to explain the enormity of the defeat. All of them taken together constitute an indictment of the people of Maryland or of democratic government, or of both.¹¹

According to the Post's editorial writers, the defeat of the charter was particularly tragic because it "had been born and raised in an atmosphere of pure democracy . . . Its provisions were framed in hard-fought disputes over facts and theories. The back-scratching, power-trading, self-serving interests inherent in most such legislative actions were absent. . . ."¹²

By its reference to "pure democracy," the Post inadvertently identified a major factor that defeated the kind of reform politics practiced by the proponents of the new Constitution: reform, particularly reform of a complete government structure, cannot be accomplished in a so-called "atmosphere of pure democracy." The working political process cannot be ignored, even though it may be

¹⁰ See Appendix E for a memorandum to Dr. Eisenhower from the author. Contained therein are some of the principal arguments used by the opponents of the proposed Maryland Constitution.

¹¹ "A Blow to Maryland . . . and the Nation," editorial, The Washington Post, May 16, 1968.

¹² Ibid.

changed to its very foundations. Certain symbols of continuity and stability must be retained. Even in the framework of a "citizen reform" movement, the support of elected political leaders must be cultivated to obtain a working majority and, after reform is approved by the voters, an understanding of the changes made--principally because those leaders will be required to implement many of the changes.

The reformers of the Maryland Constitution largely failed to adopt the incremental, supportive approach employed by the Citizens Commission. Why did they fail, and what is the evidence that they did not practice the practical politics of reform?

According to a liberal Convention delegate without strong ties to traditional organized politics, two reasons stood out: "(1) the failure to use the article referendum procedure and (2) a misunderstanding of practical politics by the Convention leadership."¹² In the opinion of Mrs. Shoshana Cardin, a large part of the Constitution would have passed in an article-by-article referendum, with only one or two alterations to the total document submitted to the voters on May 14. It is interesting to note that Maryland's failure with a referendum on the entire charter has had its effect on other states. A recent report on the constitutional revision movement in North Carolina reveals that "attempts to modernize North Carolina's constitution will be made on a step-by-step basis in lieu of an effort to do the job in one

¹² Interview with Mrs. Shoshana Cardin, Delegate to the Constitutional Convention (Baltimore County, 2nd District), October 30, 1968.

fell swoop. The theory underlying the plan of a 25-member commission to submit amendments to the 1969 General Assembly is that the voters would be more likely to approve amendments than a complete re-write. . . ."13

According to Mrs. Cardin, "It cannot be stressed too often that there were powerful public officials who forewarned a heated opposition campaign on specific issues, but this warning went unheeded."¹⁴ Although there will always be disagreement on what issues created the opposition, certain provisions of the charter had a strong impact:

(1) Multi-county regional governments' restriction on the mandatory referendum. Major objection by the opponents: City problems would be forced on surrounding counties through this provision. (See Chapter X for analysis of the regional government question as it relates to home rule and local legislation in the General Assembly.) Also, opponents claimed that county governments would become subservient to regional governments and lose autonomy.

(2) Single-member districts. Major objection, although infrequently articulated: Loss of political strength and representation would prove a major threat to practicing politicians and their organizations.

(3) Non-competitive election of judges. Major objection: The State's judicial process would be subjected to the domination of

¹³"Charter Facing Gradual Changes," Atlanta Journal and Constitution, September 29, 1968.

¹⁴Interview with Mrs. Cardin, op. cit.

judgeships by the "silk stocking" elite of the Maryland Bar, in addition to excessive power being placed in the hands of the Chief Judge of the Court of Appeals.

(4) Lower voting age. Major objection: This provision would increase the political power of extremist youth groups and generate additional fear caused by campus rioting and student unrest.

(5) Gubernatorial power to reorganize the executive branch into 20 major departments. Major objection: The governor would be given unwarranted power, particularly through removal of the legislative representative on the Board of Public Works. (See Chapter VIII for analysis of this provision in relation to the Citizens Commission proposal for a Joint Budget Committee.)

Opposition to the proposed Constitution can also be traced in part to the Baltimore and Washington riots in late April, disturbances activated largely by young men and children who participated in the looting and burning. Also, the Columbia University student disorders appeared to make a deep impression on the voters.

But, beyond the new charter's specific provisions that may have created an amalgamation of minorities to produce its defeat, other factors were present that cannot be ignored in practicing the politics of reform. Perhaps the most significant was the assertion by Michael J. Potthast, chief accountant for the State Comptroller's office, that the new Constitution would cost over 30 million dollars, if one includes the cost of new courthouses and facilities to accommodate additional legal services. In

reality, Mr. Potthast was speaking for Comptroller Louis L. Goldstein, who had been alienated from support by the Convention's near rejection of his post as an elective one. It is probable that the public did not completely believe Goldstein, but was unwilling to take the chance of assuming increased expenses in government even if capital costs would be incurred over a relatively long period of time, under a new Constitution or the old.

The "cost" argument was difficult to counter, once it had been raised by the opposition. However, Mrs. Cardin emphasizes that

Goldstein's cost scare could have been countered by a vigorous campaign in behalf of the charter. There was too little publicity, too late--a professional public relations firm should have started immediately after the Convention, even if only on a small scale. That cost argument could have been neutralized by documenting major savings, but particularly by emphasizing the elimination of graft and the pay-offs of political plums to sheriffs and non-essential offices. It is immaterial whether those offices might have been reactivated by statute--so long as the public saw a saving in voting "yes." Isn't it still true that man's most sensitive nerve is that which runs from the brain to the wallet?¹⁵

Again, from a public relations standpoint, the campaign did not seem to reach the average voter. This defect was partially caused by the failure of elected officials who would be expected to endorse "good government" programs generally, but failed to take a vigorous supportive stand for ratification. A typical case was the April 5 endorsement by Congressman Clarence Long (D., Baltimore City, 2nd District), who stated that he approved the document

¹⁵ Ibid.

generally, but disagreed with several sections. Long indicated he supported the new charter personally, but would not presume to influence the thinking of his constituents.¹⁶

It was clear that Long's ambivalence was caused by the need for him to support government reform, in light of his academic background as a Johns Hopkins economics professor. But, as a Congressman whose primary emphasis was grass-roots service to his constituents, he felt obligated to reflect the views of a relatively conservative Baltimore County electorate which voted against the document on May 14 by 10,487 to 6,237.

If the cross-pressures on Congressman Long were sufficient to create only a lukewarm endorsement, then one logical implication is that promotion of the proposed Constitution was not sufficiently effective to reassure uncertain politicians who might have vigorously supported constitutional reform on its intrinsic merits. According to Richard O. Berndt, Constitutional Convention delegate,

The delegates and hierarchy in Annapolis had a distorted view of what was taking place beyond the daily speaking engagements on the document. The proponents for the Constitution came in contact with only those who had an interest to break their normal routine and go and hear a debate. Looking back, it is obvious that these audiences were a small fraction of the number of people who had developed feelings about the Constitution. The working politicians were more in touch and were hearing more complaints from a more realistic cross-section.¹⁷

¹⁶ See the editorial on the neutrality of four Maryland Congressmen concerning the proposed Constitution in The Evening Sun, April 3, 1968.

¹⁷ Interview with Richard O. Berndt, Delegate, Constitutional Convention, Baltimore County (1st District), November 4, 1968.

What would have reassured nervous politicians, such as Congressman Long, that the Constitution was a reasonably secure gamble? Or was public opinion sufficiently fixed against the document by decisions made at the Convention so that a pro-ratification campaign would have little effect? If one judges the vote (160,280 to 31,680) by which the Convention itself was called in September 1966, then it can be inferred that at least there was public interest in modernizing the Maryland Constitution.¹⁸

In retrospect, Delegate Berndt emphasizes the importance of salesmanship and public relations to influence the body politic-- as analyzed earlier in this chapter. Berndt suggests that

the high road approach was naive and that selling the document on its merits was nearly impossible. One approach that could have been utilized on radio and television would have been the use of very definite working class oriented advertising which played to fears on the other side of the coin. For example, a rough voice saying: "These federal people are always coming in from Washington telling us what to do in Maryland. Let's pass this new Constitution so that Marylanders can take care of Maryland problems."

Berndt admitted that such promotion of reform is "deceptive in nature. However, the opponents were not noted for their intellectual integrity, and I would say that one well-placed comment about the new Constitution's provision for bussing of school children far outweighed the effect of listing hundreds of prominent

¹⁸Report of the Constitutional Convention Commission (Baltimore: King Brothers, August 25, 1967), p. 14.

citizens and members of 'the Establishment' who favored the document."¹⁹

What Delegate Berndt has to say is highly significant for the politics of reform. Unless a program of government change is incremental and directed at many different publics (such as the Citizens Commission program being directed at legislators, citizens, news media, and Convention delegates), the risks may be relatively high against its successful implementation. Berndt was not suggesting that the only way to get a favorable response from the citizenry is through intellectual dishonesty. But, in such a complex program as constitutional reform, asking the average voter to make a serious value judgment, in hopes that the judgment would reflect intense analysis, is unrealistic.

During the "PRO-CON" campaign, in remarks before a conference on state legislatures at the Johns Hopkins University, Convention President H. Vernon Eney criticized the General Assembly for resisting the calling of constitutional conventions in Maryland because of "fear of reapportionment, and reapportionment was something to be abhorred by those in control of the Legislative Branch of the State government."²⁰ He noted that sufficient support came from the 1966 and 1967 sessions only because Assembly members realized that reapportionment had changed the legislative balance of power,

¹⁹Ibid.

²⁰Remarks, H. Vernon Eney, Transcript of Proceedings, Mid-Atlantic Regional Conference on Strengthening the Legislature (February 15, 1968), pp. 100-101.

but even with that recognition, "the opponents in the Legislature were almost able to tack on the implementing legislation some amendments which would have been very crippling--one in particular that would have required a three-fifths vote on all major issues."²¹

Essentially, what the Convention President said was correct, but it must be noted that his remarks were made during the campaign for ratification and could only alienate General Assembly members who might be supporting, or considering support of the proposed charter. Mr. Eney's reference to lack of legislative cooperation appears to have been part of the distrust-of-the-Legislature syndrome noted in Chapter X, as illustrated by the Gallagher Committee's response to Citizens Commission recommendations for relative autonomy of the Assembly (e.g., no constitutional restriction on length of session). Mr. Eney's observations and the Gallagher Committee approach to the Legislative article may have been illustrative of the reformer's partial alienation from the branch of government that has direct ties to the public through its delegates and senators. As noted in Chapters I and II, the legislative branch has a "lyrical function" whereby it gives legitimacy to the decisions of government. As inefficient as its performance may seem and as unrepresentative as its members have often been, the legislature still provides a means of communication

²¹Ibid., p. 106.

and direct pressure from citizens to their local district representatives. Although not developed as a major issue by the new charter's opponents, the Maryland constitutional reformers appeared to downgrade the need for a strong, independent Assembly relative to the executive and judicial branches.

Other factors causing the defeat of the proposed Constitution were not as clearly identifiable with provisions of the document as they were with conditions of the times and the environment of Maryland during April-May 1968. In Chapters IV and V, the favorable environment of Maryland from 1960 to 1966 was analyzed as a catalyst for reform movements that began to change the structure and representative quality of state government. It is arguable, although too recent in time to prove conclusively, that by April 1968 the favorable conditions for reform had either begun to run their natural course or had been sharply altered by events. It must be remembered that civil disturbances in several American cities, including Baltimore and Washington, had preceded the May 14 special election by less than three weeks. America was also in the throes of a Presidential election campaign that was beginning to evolve the theme of "law and order" from most contenders for the major party nominations, and particularly from Alabama's Governor Wallace and his third party movement.

In Maryland, the issue of race had clearly become intermingled with that of civil unrest. As the fires of burning and looting were beginning to smolder in Baltimore and the Federal troops

were departing, Governor Spiro T. Agnew delivered a sharply worded statement to the City's prominent Negro leaders rebuking them in essence for failing to repudiate extremists in their race. The lines were sharply drawn, and the division in Maryland on social issues sharpened.

It is difficult to document the impact of racial feeling on the defeat of the new Constitution on May 14, although Delegate Richard Berndt did make reference to an opposition rumor that the charter contained a provision providing for the bussing of Negro children to white schools. (See this chapter, supra.) Berndt also noted that, in his opinion,

the overriding factor in my geographic area--Woodlawn, Catonsville, and Arbutus north of Baltimore--was fear of the Negroes and the urban problems that seem to be identified with them. Running a close second was the fear of increased state taxation, although I think this held far less weight than the Negro issue.²²

According to Berndt, precinct workers who were distributing "PRO-CON" literature to local residents reported highly unfavorable responses from area residents, such as:

"I'm not kowtowing to any nigger and that is what this Constitution will make me do."

"I don't care what it [the Constitution] says; I don't want black children bussed to my children's school."²³

Berndt was quite critical of the lack of effort by pro-Constitution forces to combat "visceral reactions on the part of

²² Interview with Delegate Richard Berndt, op. cit.

²³ Ibid.

those whom Dale Anderson [Baltimore County Executive who fought the proposed charter on the "regional government" issue] refers to as 'the working people.'" Berndt recalled "the contrast between the opposition's crudely drawn cartoons showing John Q. Citizen being fleeced by Con-Con hold-up men and the PRO-CON campaign committee's five-minute radio analysis of a complex Article, narrated by Goucher political science professor Robert Loevy."²⁴

The connection between the defeat of the new Constitution and the race-urban disorder issue can be shown by an analysis recently completed by Dr. Robert Loevy, Staff Research Director for the Constitutional Convention's Committee on the Legislative Branch.²⁵ According to Loevy, there is a high correlation between the anti-Constitution vote and those citizens who supported Governor George C. Wallace in the 1964 Maryland Presidential primary and Democratic gubernatorial candidate George P. Mahoney in the 1966 election. The Goucher political scientist concluded that "a coalition of rural voters, Baltimore area suburbanites, and middle-class white residents of Baltimore City defeated the proposed Constitution."

²⁴Ibid.

²⁵Dr. Robert Loevy, "The Electoral Defeat of the Proposed New State Constitution for Maryland: A Computer-Assisted Analysis of the Votes Cast in the Special Election on May 14, 1968," a paper from which an article is being drafted for publication by the National Municipal League.

The Loevy survey also showed that the new charter was supported by 82.2 per cent of the voters in predominantly Negro precincts and only 44.9 per cent of those in white Catholic and Protestant precincts (although the turn-out in Negro precincts was generally low--approximately 10 per cent). A close relationship was also found in the degree of support for Wallace in the 1964 primary and the degree of opposition to the Constitution:²⁶

<u>Wallace Vote (1964)</u> <u>(Per cent)</u>	<u>Precincts</u> <u>Reported</u>	<u>Per cent Vote</u> <u>for Constitution</u>	<u>Per cent Vote</u> <u>Against</u>
0 - 10	316	71.5	28.5
10 - 30	79	59.6	40.4
30 - 50	145	46.3	53.7
50 - 70	246	28.6	71.4
70 - 90	164	18.3	81.7
90 -100	23	18.8	81.2

Loevy concludes his report by an accurate analysis of the types of campaigns conducted by the proponents and opponents of the new Constitution of Maryland.²⁷ His basic distinction is the "cerebral," as opposed to the "non-cerebral" kind of campaign, and although the distinction is valid and accords with the analysis of this chapter, Dr. Loevy's conclusion seems to justify the Convention's political strategy and ratification campaign as a valid kind of reform politics.

²⁶ Ibid., pp. 7-8.

²⁷ Ibid., p. 12.

According to Loevy,

On the basis of the computer-assisted analysis, there does not appear to be very much that might have been done to sell this particular new Constitution to the people of Maryland. The voting returns suggest that a winning majority for the new state charter probably could have been fashioned only by watering down the many reforms which were included in the proposed Constitution. The voting figures also suggest that the Constitution would have had to have been much less liberal, much less progressive, and much less intellectual in tone in order for it to be accepted by the voters. It would also have had to have been considerably more palatable in the rural areas, probably by reducing significantly the reforms involving representation in the state legislature. Constitutional reform is a very intellectual and academic process to begin with. The computer-assisted analysis suggests that bringing this process down to a level that the average Maryland voter could understand is a very difficult, if not impossible, task.²⁸

The basic weakness in the Loevy conclusion and the politics of reform practiced by the Constitutional Convention is a failure to recognize that, in order to effect government reorganization and modernization, "a very intellectual and academic process" must be made understandable in its broad concepts to the general public. If that is not possible, then the politics of reform must be conducted by a more gradual, incremental procedure that does not alienate critical segments of a state's political elite and general public. While the programs of the Citizens Commission and the Eagleton Institute have been less dramatic and perhaps less controversial, the methods employed in their implementation appear to have been vastly different from the efforts to give Maryland a new Constitution in 1968.

²⁸If Dr. Loevy meant single-member districts when he referred to "representation," that concept, in the author's opinion, was unpopular in areas other than Maryland's rural counties.

B. LEGISLATIVE REACTION TO THE DEFEAT OF THE CONSTITUTION
AND THE PROGNOSIS FOR FURTHER REFORM

For two months (June-July 1968) following the defeat of the proposed Constitution, state government reform was at its nadir in Maryland. During this period of re-evaluation and reflection, the Citizens Commission chairman conducted a series of interviews with legislative leaders to determine their assessment of the politics of reform, particularly as it related to reorganization of the General Assembly. Their responses to questions were candid, and, of all the interviews analyzed in this dissertation, this series perhaps most clearly reflected the thinking of state legislators as those politicians who are very sensitive to the public mood. Their prognosis for future comprehensive reform of the total State government structure, particularly constitutional change, was guarded and cautious. Their prognosis for reorganization of the Legislature was more optimistic, because, in the words of Senator Blair Lee III, "we have been a part of this change, have been responding to suggestions by Eagleton and the Wills Commission, and initiating ideas of our own for internal improvement of the legislative operation."²⁹

Senate President William James (D., Harford County) reflected caution in his outlook for continued reform of State government on

²⁹ Interview with Senator Blair Lee III, June 20, 1968.

a broad basis. He considered the defeat of the new Constitution analogous to that of the "successful petition movement against the parallel Bay Bridge span during the 1966 primary election. It is dangerous for the Legislature to override the will of the people when they have spoken as loudly as they have on wholesale constitutional change."³⁰ Although he had served as a vice president of the Constitutional Convention and had supported the new charter publicly during the ratification campaign, James indicated he would not lead any movement for a series of constitutional amendments, "unless it could be shown that there is strong public support for them." Of all the legislative leaders interviewed, he was the most reluctant to press for further legislative reorganization, although he favored "putting a cap on the size of the Legislature."³¹

Senator James's reluctance to amend the Legislative Article was shared by a delegate who was more liberal in political philosophy than the Harford County legislator. Paul Sarbanes (D., Baltimore City, 2nd District) opposed constitutional reform of the Assembly or adding amendments to the charter, "at least on a 'rush' basis in special session this fall. This sort of change would merely be cosmetic and enable the stand-patters to hold up

³⁰ Interview with Senator William James, June 14, 1968.

³¹ Senator James had supported the 40-member Senate/80-member House plan during the Annapolis Convention, which was rejected on the floor in favor of the 40/100 ratio. The smaller House of Delegates favored by James parallels his opposition to a reduction in the powers of the Legislative Council (Chapter VI and this chapter, *infra*), primarily because of his desire to strengthen the influence of the Senate in the bicameral system. He believed the numerical superiority of the House would be strengthened by committee reorganization.

minor alterations as substantive accomplishment, thereby staving off any efforts at real reform."³²

On June 24, a Legislative Council subcommittee appointed to review changes in Article III, met to analyze the constitutional status of the General Assembly and, in the wake of the proposed charter's defeat, the need for calling a special session to consider appropriate amendments. But, during the week prior to that meeting, two senators who had played important roles in legislative reorganization were interviewed. Senator Blair Lee expressed disappointment about the May 14 election and related the proposed Constitution's defeat to the single-member district provision of the Legislative Article.

The Legislative Branch committee must share some responsibility for the lack of legislative support for the defeated Constitution. When they pushed that single-member district plan, they were asking for trouble in some parts of the State. I just don't see how that provision was so important that it was worth creating the opposition it did. Mind you, the single-member district plan was not really a source of public opposition, but it did cut off support of many political leaders whose active work for the new document was needed.

While expressing regret about the Constitution's defeat, Senator Lee, who was chairman of a subcommittee to consider changes in the Local Government Article, emphasized his continuing interest in legislative modernization, particularly reducing the volume of local legislation before the Assembly each session. To that end, he planned to have his subcommittee draft constitutional changes easing the restrictions on counties applying for

³²Interview with Delegate Paul Sarbanes (D., Baltimore City, 2nd District), July 1, 1968.

home rule, "provided a special session of the Legislature is called this fall for considering constitutional amendments."³³

In general accord with Lee was Senator Roy Staten, who had been appointed to chair the Legislative Article subcommittee, under the general supervision of a Legislative Council Constitutional Revision Committee established, in Senator James's words, "to salvage what we could from the defeated Constitution in the form of amendments to our present charter."³⁴ On the day his committee met, Staten said that he was "concerned about going overboard with constitutional changes when the electorate has so recently spoken against this kind of change." However, as he had done in offering a proposal for additional administrative staff for legislators (Chapter IX), Staten now focused primarily on the Assembly improvements that would make public service more attractive to an individual senator or delegate. He suggested that a 90-day session was feasible only if appropriate remuneration were provided for the extra 20 days. In order not to appear excessively concerned with salary, Senator Staten emphasized that "of equal concern with the money is a 90-day session, but I don't know how acceptable either of these changes will be."³⁵

³³ Interview with Senator Blair Lee III (D., Montgomery County), June 20, 1968.

³⁴ Interview with Senator William James, June 20, 1968.

³⁵ Interview with Senator Roy Staten (D., Baltimore County), June 24, 1968.

The Baltimore County legislator couldn't have sensed more accurately the doubtful acceptability of the salary increase proposal, even though his recommendation was mechanical in converting the \$2,400 salary for 70 days to \$3,080 for 90 days, based on \$38.25 per day. Although the Citizens Commission recommended a \$6,500 total salary without any per diem payments, Chairman Staten and a majority of the committee opposed that proposal on the grounds that the public would find it difficult to understand any monetary increase, even the upward adjustment based on an additional 20 days in session. He added that the "news media would oppose the salary increase editorially and in the treatment of articles on the subject."

To the surprise of Citizens Commission representatives at a July 1 meeting, the Staten subcommittee partially reversed itself and recommended a 90-day session and a \$5,000 salary, including retention of the \$1,750 per diem payments for a 70-day session, or preferably, \$2,250 for 90 days. According to Delegate Paul Weisengoff, a member of the subcommittee, the increased figure was agreed upon "largely because I spent a long time pointing out that, from personal experience, I simply couldn't live off the present salary, and that if it continued, people would be driven out of the Legislature."³⁶

Immediately after the Legislative Council Constitutional Revision Committee had approved the Staten subcommittee report, the

³⁶ Interview with Delegate Paul Weisengoff (D., Anne Arundel County), July 2, 1968.

Evening Sun connected the salary increase with the lucrative pension plan established by the Assembly in 1966. (See the author's analysis of that pension plan in Appendix B.) In a sharply worded article, reporter Michael Weiss noted that

legislative retirement benefits, already more lucrative than pensions for other State employees, would more than double under an increased salary plan recommended for adoption at a special session of the General Assembly . . . Under a special pension plan legislators enacted for themselves a few years ago, they receive upon retirement 5 per cent of their salary during their last year in office for each year in office. In effect, this means that a lawmaker with 20 years' service receives an annual pension representing 100 per cent of his wages during his final term. Doubling the salary, therefore, would double the pension. Senator Roy Staten, chairman of the subcommittee that proposed the calling of the special session and the boost in salary, will have served 17 years when his current term expires in 1970. If he is reelected from his secure political fiefdom at that time, he would get the full \$5,000 pension if the new salary level is approved.³⁷

Despite the desire by some political leaders to amend the Maryland Constitution with some of the more desirable sections of the defeated charter, it was clear that the Council had taken a narrow approach, opening the Assembly up to criticism that it was placing member-benefits above other amendments. As Delegate Sarbanes put it, "These things don't merit the calling of a special session and expenditure of the money. It seems to me that if we're going to spend money while we're in the midst of a revenue crisis, there are other things to spend it on first."

³⁷"Legislative Salary Increase Would Double Pensions," The Evening Sun (Baltimore), July 11, 1968).

Restoring recent Medicaid cuts, for example, should take priority."³⁸

The final outcome of the Legislative Council request was a polite "no" by Governor Agnew, who by mid-July had been lured into national Republican party politics prior to the August 1968 Miami Beach Convention.

One of the most revealing views of a state legislator about the decline of Maryland government reform came from House Judiciary Chairman Thomas Hunter Lowe, who had been appointed chairman of the Legislative Council's Constitutional Revision Committee. Over two years after Lowe had discussed the nature of the state legislative process in great detail before the Citizens Commission (Chapter VII and the analysis of the May 7, 1966, Annapolis hearing), this Eastern Shore delegate exhibited the same political acumen that had marked his discussion of the General Assembly committee system. However, Lowe's 1968 opinions revealed a sharp cleavage between the career politicians and the citizen reformers in Maryland, particularly the Constitution drafters in the latter category. As chairman of the Constitutional Revision Committee, he expressed a desire to "have as little revision as possible at this time. How can we talk about some textbook idea of single-member districts when each county isn't even assured of one delegate?"³⁹

³⁸ Interview with Delegate Sarbanes.

³⁹ Interview with Delegate Thomas Hunter Lowe (D., Talbot County), June 26, 1968, at Easton, Maryland.

It was clear that reapportionment and its corresponding reduction of the numerical representation of rural counties was still an integral part of Lowe's frame of reference toward reform politics. Also implicit in his thinking in 1968, as it had been in the 1966 Annapolis hearing, was support for a centralized, tightly controlled leadership structure within the General Assembly itself. In a folksy but blunt manner, Delegate Lowe discussed his two concerns:

Our small and forgotten counties here on the Shore often have conflicting interests. The basic tenets of representative government would argue that each county should have its own case stated in the Assembly, rather than forcing a delegate representing us all to decide. If the "do-gooders" are worried about the size of the Legislature, they shouldn't lose so much sleep. We can safely reach 200 people because there are men at the top who know how to run the operation and should have the power to run it. That might be one problem about your Commission's suggestions for committee reorganization: Even though I guess it's a good idea to give everyone something to do, it becomes hard to keep things orderly and under control with too many chiefs running these committees.⁴⁰

In response to the question about what amendments should be put on the November 1968 ballot after a special session, Lowe observed:

First of all, don't be so sure that there is going to be a special session. But if there is, I think only the most urgent business should be on the ballot, so it can be kept as short as possible. The only thing that is important enough is the extension of the legislative session to 90 days. And about a corresponding raise in salary? Absolutely not! Besides, if we put a token raise on the ballot now and finally get it to where it belongs at \$8,000 in 1970 or 1972, the public will say, "We just gave those bastards a raise two years ago!"⁴¹

⁴⁰ Ibid.

⁴¹ Ibid.

Delegate Lowe emphasized that he was not opposed to constitutional revision per se, but that his objections were limited to "the work being done by people who weren't willing to deal in the practicalities of government and who had some notion that they were always morally right on government policy." He concluded that even if the Council committee approved the Staten subcommittee and other amendments to the Constitution, his House Judiciary Committee "would have a second shot at those amendments during a special session." The legislator made it clear, however, that internal Assembly reorganization proposals would continue to be examined and implemented, "once Billy [Senator James], Marvin [Speaker Mandel] and I agree on what is to be done."

Although hardly modest, these observations by Thomas Hunter Lowe reflect the astute and durable legislative mind at work. In many respects, he is "the lawmaker" type of legislator described in James David Barber's book.⁴²

⁴²James David Barber, The Lawmakers: Recruitment and Adaptation to Legislative Life (New Haven and London: Yale University Press, 1965).

CHAPTER XIII

THE SUCCESS OF MARYLAND'S REFORM POLITICS IN 1968:

THE LEGISLATIVE COUNCIL REORGANIZES ITSELF

AND ITS COMMITTEES

On August 14, 1968, a short article appeared in the Sun which indicated that House Speaker Marvin Mandel had made a decision and was planning to implement a major portion of the Citizens Commission and Eagleton reports. Political writer Edward Pickett reported that "leaders of Maryland's General Assembly will meet here tomorrow to discuss proposals that would put State legislators on year-round duty. The Legislative Council will hold a session on proposals to create permanent standing committees of the Legislature to work during the nine and a half months of the year the Assembly is not in session."¹ While the Citizens Commission had not been forewarned of this step directly by Speaker Mandel or the other legislative leaders, it was clear from June-July 1968 observations by those leaders, particularly Senator Lee and Delegate Lowe, that internal reorganization was still being contemplated.

¹"Full Legislative Year Considered. Leaders to Weigh Use of Between-Sessions Units," The Sun (Baltimore), August 14, 1968.

As noted in the latter part of Chapter XI, the House of Delegates took a major step in January 1968 to reorganize its committee structure during the 70-day annual sessions. But an important step toward professionalization of a Legislature that was still essentially part-time had not yet been taken. That step was organization of legislative committees to function on a continuing basis between sessions. In the words of the Citizens Commission,

We endorse the concept of the citizen-legislator who leaves his business or profession and participates in a limited-length session at Annapolis. But, in order to meet the increasing demands of our complex and technically oriented society, however, a professional committee system is needed. Legislative committees meeting throughout the year can more adequately survey problem areas within their legislative jurisdictions and more effectively concentrate upon recommending comprehensive legislation which is technically and legally correct. It is clearly impossible for the General Assembly to consider adequately in 70 or 90 days anything approaching the total of 1,828 bills that were introduced in the 1966 session. Of the 1,828 bills, 794 were passed by both houses. No Senator or Delegate would suggest that in 70 days, all those bills were thoroughly studied.²

The Commission had emphasized that, with the establishment of pre-filing procedures, the need for "continuing committee evaluation and study of proposed legislation will be magnified." The preceding analysis led to its recommendation that House and Senate substantive committees be required to function on a year-round basis, and be required to meet at least eight to ten times each year, or more often as needed. This recommendation must be related

²The Citizens Commission Report, p. 26.

to both Citizens Commission and Eagleton proposals concerning the Legislative Council which appeared to sharply contrast one another. As analyzed in Chapter VIII, Eagleton recommended abolition of the Legislative Council and its replacement by a "Joint Committee on Legislative Policy and Management." The Citizens Commission had actually recommended strengthening the Council in areas of administration, including coordination of year-round committee work which did not, however, extend to interference with a committee's substantive legislative research. Again, as noted in Chapter VIII, the Commission did not consider the two recommendations as different as the language might indicate, primarily because the new body suggested by Eagleton would perform coordinating functions similar to those duties of a restructured Legislative Council suggested by the Citizens Commission. The essential difference was one in tactics where the Citizens Commission believed it necessary to balance change with symbols of stability in order to gain the necessary legislative support for its recommendations.³ The Legislative Council is clearly a symbol of stability. Problems emerged, however, because it is also a symbol of power.

The perceived role of the Legislative Council by the two legislative reform groups in Maryland is relevant to the important deliberations that took place among the members of the Legislative Council

³See Chapter V, and also Davidson, Kovenock and O'Leary, Congress in Crisis: Politics and Congressional Reform (New York: Hawthorne Books, Inc., 1967), pp. 52-62.

in August-September 1968. It was generally agreed among the legislative leaders that both Eagleton and the Citizens Commission wanted revitalized committee operations for the entire year, during and between sessions of the Assembly. The fundamental matter of concern for the holders of political power in the Maryland Legislature was how to implement the substance of those recommendations and, at the same time, be relatively assured that they were not abdicating the power and prestige they enjoyed as Council members. In other words, the future of the Legislative Council was closely related to reorganizing Senate and House committees to function on a year-round basis. The specter of powerful new committee chairmen emerging from that reorganization was a vision that no member of the Assembly's ruling elite could afford to take lightly.

The discussion during the meetings of the Legislative Council in August 1968 revealed an acute awareness of political power and the implications of reform politics for an institution frequently slow to change. If one theme could characterize Speaker Mandel's approach to the problem of committee and Legislative Council reorganization, it was "full participation" on Committees by all members of the Senate and House--at least the opportunity for such participation. At the beginning of one particularly significant meeting on August 14, Speaker Mandel opened the discussion on this note, emphasizing that a legislator who was not active "beyond pressing his button on the roll call voting machine"

performed no creative service within the legislative process.⁴

In a somewhat cynical and humorous vein, but not entirely without justification, Delegate Thomas Hunter Lowe, who had just completed hearings of the Council's Constitutional Revision Committee (this chapter, supra), commented that "Marvin must be anxious to pick up IOU's from the entire House by choice committee assignments for all the members." By the time of the August 14 meeting, the Republican Convention had nominated Governor Agnew as its Vice-Presidential candidate, and all participants in the Council meeting were aware of the Maryland Constitution's provisions for selection of the governor's successor by the Legislature.⁵ They were also aware that, in all probability, Speaker Mandel would be a leading contender to succeed Governor Agnew if the latter were elected Vice President.

Mandel's principal criticism of the Eagleton recommendation for three joint interim committees was insufficient utilization of all legislators as committee members on the proposed Finance (32 members), Economic and Social Affairs (44 member), and Judiciary (32 members) units. According to Mandel and Delegate Paul Sarbanes, approximately 75 legislators would be without significant committee duties. However, the Citizens Commission

⁴Quotations attributed to members of the Legislative Council during the August 14 meeting are taken from the author's notes of the proceedings. Some statements are the result of private interviews with the members and, where used, are so identified.

⁵The Constitution of Maryland, Article 2, sections 6 and 7.

recommendation for five Senate and seven House committees allowed for (1) a utilization of all members on those committees and (2) a functioning of those committees on a year-round basis as joint panels. Eagleton's proposal differed by its elimination of some in-session committees for the nine months when the Legislature was not operating formally in Annapolis. The dichotomy between interim and in-session committees was simply not present in the Citizens Commission proposals. The in-session committees would operate throughout the year, studying and preparing legislation in their respective fields.

It should also be noted that creation of joint committees for just the interim period (Eagleton) would make it more difficult to establish substantive power for those committees than by simply extending the work of the in-session committees to year-round performance (Citizens Commission). And nothing in the Citizens Commission plan would preclude the permanent committees from operating on a joint basis between sessions, for economy of administration and time.

The essential difference between the two plans was that, although Eagleton's recommendation abolished the Legislative Council, the power of its substitute "Joint Committee on Legislative Policy and Management" might in fact be stronger over committees that functioned only between sessions--the reason being that the Legislative Council, or its equivalent, is traditionally and

legally an interim agency for state legislatures.⁶ The proposition that it could exercise policy control over the substantive work of committees functioning only during the interim period can only be re-enforced by the discussion among Council members on August 15. And, while the Citizens Commission had acknowledged the administrative utility of the Council by recommending its retention, it became evident that the Assembly leaders were nervous about any committee system that might exercise too much independence from the Council.

As is the case with the modified dual appropriation-authorization system recommended by the Citizens Commission,⁷ the issue before the legislators on August 15 was decentralization of political power within the Assembly, a concept supported within limits by the two Maryland legislative reform groups. The support did not represent an attack on the General Assembly's power structure, but was rather a response to the need for some specialization within legislatures, in order to cope with the increased complexities and costs of government on the state level.⁸

⁶For the most complete historical, legal and political analysis available on the Maryland Legislative Council, see A. Clarke Hagensick, Maryland's Legislative Council in Action (unpublished doctoral dissertation, The Johns Hopkins University, 1960).

⁷See Citizens Commission Report, pp. 32-33.

⁸For a recent comprehensive analysis of increased governmental responsibilities on the state level, see Thomas R. Dye, Politics, Economics, and the Public: Policy Outcomes in the American States (Chicago: Rand McNally & Co., 1966).

Practical problems confronted the Council at its August 14 meeting and, as analyzed by Senator Blair Lee, they centered around the legislators themselves. "Many delegates and senators," he said, "are not willing to do the committee work; are desirous of working, but have to earn a living between sessions; and a smaller number simply don't have the requisite capability. In the last category, some would have a heart attack if asked to serve on a committee!" Accordingly, the Montgomery County Senator re-focused the concept of "full participation" to "full participation, provided there is adequate research staff assistance to make the work of substantive committees meaningful."

At this juncture, the role of the Legislative Reference Service, the Council's research staff support, came under careful analysis. As noted in Chapter XI, Dr. Carl Everstine, Reference Service Director, was essentially committed to maintaining the power and influence of his agency over Council policy and Council-produced legislation. Before the August 15 meeting began, he observed that "we don't expect to make any final decisions tonight."

The Everstine tactic concerning interim committees appeared to confine their function to that of "study" only. Limiting the function of interim committees to research seemed to support the concept of centralized leadership, held by Delegate Lowe and propounded through the House Ways and Means Committee chairman, William Houck, on August 15. A classic example of the "go along to get ahead" legislator, Houck had risen in the House structure by adopting conservative positions on fiscal matters and carefully cooperating with the Speaker, the Majority Leader, and other key

House committee chairmen. In typical low-key fashion he commented:

It might be better if the legislative operation were a little bit more cumbersome. It's so easy, in the throes of emotion, to take legislative action that you'll regret. I'm a great believer in having some opportunity to sit back and reflect--if I write someone a nasty letter, I'll never mail it right away. Sure, good legislation dies at every session, but there's a hell of a lot of bad legislation that gets killed by the same system. If a problem is severe enough to warrant legislation, and if it's been there long enough, in most cases one more year isn't going to be catastrophic.

At the August 14 meeting, Delegate Houck urged that "we not go off half-cocked on this committee thing. It should still be the job of the Council to funnel subject matter to these interim committees for research, and those committees should report back to the Council for final decision on the bills they have studied."⁹ From his suggestion emerged a conflict among the Council members on the "generalist" vs. the "specialist" in legislative work. The dilemma that sometimes faces the legislator is not new, but until this Council session, Maryland Delegates and Senators had not thoroughly analyzed its ramifications in relation to reform program of the Citizens Commission.

The view that specialization is not appropriate to the legislative process is not unusual, having been supported by assumptions

⁹ Interview with Delegate William Houck (D., Frederick County), August 29, 1967. For further analysis of Houck's and other legislators' views of their branch of government, see John Schmidt, "A Look at the Legislature," Baltimore Magazine (Baltimore Chamber of Commerce, January 1968), pp. 17-56. That issue also contains a brief comparative analysis of the Citizens Commission and Eagleton Institute reports, "Reorganizing the Legislature," pp. 28-29.

that consideration of technicalities and details of legislation belong to the administrative agencies affected by these laws. The "generalist" legislative function has often been depicted as broad policy decision, including compromise, management of conflict, adjustment, and communication with the public.¹⁰

Senator James reflected these traditional views by observing that "there is a danger in compartmentalizing and specializing our work too much. I like the interchange of public policy views on this Council as it now operates." In response, Senator Lee, who would presumably be as desirous as James to preserve Senate influence on the Legislative Council, spoke of "the need to specialize, even if it does mean that individual legislators will have to direct their attention to committee work before broader decisions are made by the Council. As a result," he emphasized, "we are more apt to get comprehensive and better researched legislation. Congress has had to meet this problem, and as we get more complex in our economic situation in Maryland, this Assembly is just going to have to rely on what our subject-matter committees tell us. But the reliability of this information depends on whether we get the results of committee work 'more able to stand up in court.'"

In more political and less sophisticated terms, Senator Staten observed:

¹⁰For general analysis of legislative functions, see Chapter II. Also, see Carl J. Friedrich, Constitutional Government and Democracy (Boston: Ginn and Co., 1946), Chapter 16.

I've got to be able to go back and tell the people in Dundalk that we, their elected representatives, are protecting ourselves from the bureaucrat who is going to spend their money every time he gets the chance. And the only way we can do that is to have enough help to study and analyze these bills.

In a subtle and intriguing dialogue, Dr. Carl Everstine, the only "bureaucrat" in the room, spoke up "in favor of the present system where the Council handles the legislation that isn't acted upon by the Assembly during the regular session." (Speaker Mandel had noted earlier during the meeting that one of the most valid criticisms of the Legislative Council was that "it had become a 'dumping ground' for bills that were too controversial for the Assembly to act on, or for legislation that simply hadn't gotten sufficient committee study.") Everstine indicated that he "was nervous about overly large committees with everybody getting into the act. And, about staff, I don't want too much expansion. I have a horror of people running around falling over themselves. After all, we've increased 100 per cent during the last year" (to which Senator Lee noted, "Yes, Carl, from two to four research assistants for seven major committees!")

Comments from both Speaker Mandel and two staff assistants to Dr. Everstine seemed to undercut the Legislative Reference director's reservations about staff increases. Mandel couldn't have more directly responded by saying that "the whole legislative process has changed in the last 15 years. It's more complex now, and the problems will get more and more difficult. Our biggest

weakness is in staff. We have to do for Legislative Reference what we did for Fiscal Research last summer when a Joint Budget Committee was set up."¹¹

Of particular interest were comments made by Dr. Everstine's staff associates to the effect that they would each prefer to specialize in a particular legislative area, such as judiciary or finance, under a committee chairman. Responding in a stage whisper, Everstine said, "Then, they would be out from under my direction."

The dialogue about relative committee autonomy, as contrasted with Council supervision of the interim work being done by committees, may be one manifestation of the specialist vs. generalist concept on the state legislative level. The device which has been used to counteract the "generalist" concept is the standing committee system. The committee encourages a legislator to specialize and concentrate on a specific area of legislation, but it has been noted by William Buchanan that "committees are denied the formal authority that might accompany specialized responsibility. They remain, in theory, representative of the whole house; their purpose is ostensibly economy of attention; their decisions are revocable by a bare majority."¹²

¹¹See Chapter IX for analysis of Joint Budget Committee proposals and action taken by Senator Lee's committee in this area. Hearings were held during August 1967.

¹²Wahlke et al., The Legislative System, op. cit., p. 194.

It was recognized by the Citizens Commission that the committee system had been subjected to severe obstruction by the Assembly leadership.¹³ Part of this weakening process appeared to have been caused by: (1) two sets of committees, one in-session and the other interim; (2) the control exercised by the Legislative Council; and (3) a somewhat "status quo" Reference Service as the Council's support agency. Chairmen of key committees are often appointed on the basis of their "reliability" and willingness to cooperate with the leadership. The majority member who ascends to the chairmanship may not always be the best informed on a specialized area, but he is probably an effective political operative who can mesh his committee's gears with those of other House or Senate leaders.

One committee chairman, Thomas Hunter Lowe, who estimates that he works twelve to fourteen hours a day on Judiciary matters, is reluctant to say that his knowledge of legislation is the paramount reason for maintaining the leadership role of that committee. "The reason I'm in power--other than being reasonably intelligent--is that I keep in close touch with the Speaker and the other House leaders. It's a clique, let's face it. But I think it's a responsible one."¹⁴

¹³ See Citizens Commission Report, pp. 21-22, and its analysis of the uneven distribution of House committee workload, caused largely by assignment of bills to committees whose chairmen could be counted upon to adhere to the wishes of the House leadership.

¹⁴ Interview with Delegate Thomas Hunter Lowe, op. cit.

A somewhat different approach to the influence of committees, from that expressed by Buchanan, is Richard Fenno's analysis of the U.S. Senate and House Appropriations committees.¹⁵ He believes that "the power of the purse is the bulwark of legislative authority" and develops a well-documented thesis of intra-committee discipline and committee influence over the house. Certainly, it is clear that the appropriations process in the Congress is the committee system at its most sophisticated level, to the point where most members of these powerful money dispensers consider this specialized field their most important legislative function.¹⁶

Neither Eagleton nor the Citizens Commission saw the Maryland legislative committee system reaching the influence attributed by Fenno to Congressional appropriations committees. Eagleton envisioned two sets of committees, one in-session and the other interim. The Citizens Commission recommended a single group of major committees to function all year, under the general administrative direction of the Legislative Council between sessions. While Eagleton eliminates the Council, its replacement--"The Joint Committee on Legislative Policy and Management"--would

¹⁵ Richard F. Fenno, Jr., The Power of the Purse: Appropriations Politics in Congress (Boston and Toronto: Little, Brown and Company, 1966).

¹⁶ Ibid. For analysis of the adaptation, expectations, satisfactions of congressmen serving on the House Appropriations Committee, see Chapter III, "Committee Expectations and Adaptations," pp. 79-127, and Chapter IV, "The House Committee: Structure for Decision-making," pp. 127-191.

appear to exercise about the same level of administrative coordination as the Citizens Commission's restructured Council.¹⁷

What should be noted is the emphasis that both Eagleton and the Citizens Commission place on giving the General Assembly committees more substantive power than they currently enjoy in the Maryland legislative process. Although the Commission happened to believe that a single set of committees could maintain more continuity and strength than one set for in-session and the other between sessions, the essential need is clear under either proposal: the Legislature must develop a process whereby specialization is the basis of a bill's content, rather than that bill being the product of an over-extended staff's preparation and the "generalist" legislator's examination. Although Senator Harry Hughes observed at the August 14 meeting that he specialized in financial matters, few others present related themselves to particular areas of legislation.¹⁸

¹⁷Eagleton Report, pp. 114-122.

¹⁸Delegates Lowe and Sarbanes considered themselves "specialists on judicial matters," but as Lowe observed, "our committee gets many bills that might not be strictly construed as belonging in the judiciary area." Senator Lee noted that he had been "working more closely with finance than other areas." But Delegates Houck (House Ways and Means Chairman), Weisengoff, Emanuel, Hess, and Senators James and Staten did not consider their work in the Legislature any more relating to committee than to the House or Senate as a whole. These self-classifications were obtained by the author in interviews immediately after the August 14 meeting.

Eagleton and the Citizens Commission had, in essence, recommended the decentralization of the Senate and House committee systems in the Legislature--or what might be termed "a relative independence" from the central leadership of both houses and the Legislative Council. The purpose of the two reformers' proposals was not to weaken the Assembly power structure, but rather to enable the committees to prepare more carefully researched legislation on a year-round basis. While the power structure might be somewhat weakened as a consequence, it was believed by both reform groups that the limited session of the Assembly would serve to maintain the total Senate and House leadership groups as stabilizing influences for the 186 part-time legislators. At the same time, through committee work between sessions, the individual member would become more of a participant in the legislative process than a spectator. To a degree, the recommendation for more participation, as propounded by both Speaker Mandel and the reformers, is a normative one and relates to the philosophy of "responsibility and responsiveness" analyzed in Chapter II. The practical justification for more member participation may be the increased complexity of the legislative process. But Eagleton has sufficiently documented the demands upon legislative research in Maryland, as compared with other states, to support the contention that the workload has increased in the

last 20 years and that Maryland has not responded as well as other states to meet the added demands.¹⁹

In addition to carefully studied bills and members who "do their homework," specialization and orderly committee process may produce another result. Institutionalization, such as that Polsby has observed in the House of Representatives,²⁰ may ultimately occur in the Maryland Assembly and other states that now have relatively unsophisticated legislative procedures. And that institutionalization could mute conflict to the point where policy issues might be resolved by the researcher's citation rather than the policymaker's creative analysis and disagreement. It would appear from contemporary Maryland Senate and House committee practices, however, that research has not moved to the point of competing with intuitive judgments by the members--and, as Senator Lee noted at the August 15 Council meeting on interim committees, "we can't rely any more on just what we happen to think at the time an issue is first raised."

The majority of the Council must have agreed with Lee because, after a voice vote, Dr. Everstine was instructed to draft a plan for increased staff assistance to three major interim committees that would be under the supervision of the Legislative Council. These joint committees--Judiciary, Economic Affairs, and Budget

¹⁹ Eagleton Report, Chapter 4, "The Management of Legislative Information," pp. 123-166 and Table 8, "Annual Workload of Legislative Research Agencies in Selected States," p. 139.

²⁰ Chapter VI and Nelson Polsby, "The Institutionalization of the U.S. House of Representatives," APSR, Vol. LXII, op. cit.

and Finance--were to be operative between sessions only, as recommended by Eagleton. But they were to report to the Legislative Council, as opposed by Eagleton. The Citizens Commission had proposed retention of the Council, but only as an administrative, coordinating body; the Commission had also suggested use of the same continuing committees on a year-round basis. Neither reformer got exactly what he wanted, but the step taken on August 15 was a significant one, particularly the Council's commitment to increased research staff.

The Sun enthusiastically reported the decision for increased interim committee activity, including the observation that the Council "would be reduced from 30 to 20 members and that its function would change from that of an investigative group to that of channeling proposed legislation and studies to other committees." However, it was noted that, as the "Policy Steering Committee, the Council would retain the power to approve proposed bills after they are studied by the joint committees and before the bills go to the full assembly for action at the annual 70-day session."²¹

Both the draft legislation and the Sun article indicated a reduction in the Legislative Council's substantive control over legislation content and committee policy. However, it would appear from the August 15 discussion, analyzed in this chapter,

²¹"Legislators Map Interim Changes," The Sun (Baltimore), August 16, 1968.

that key Council members--notably Senator James, Delegate Houck, and probably Delegate Lowe (although he remained uncharacteristically silent during most of the meeting)--had reservations about any sudden shift of power from Council to individual committees.

Appendices H and I contain the relevant portions of the bill restructuring the Legislative Council and the Legislative Reference Service research staff changes.

The most important feature of the legislation is probably contained in Subsection 27(a), the statement of legislative intent.²² The reduction in the size of the Council is intended primarily to transform the body into a steering or rules committee. And, according to Dr. Everstine, "the basic intention is that Legislative Council committees in the future will be composed mainly or solely of standing committees of the Assembly itself."²³

According to the Citizens Commission view, the consolidation of Assembly Committees will be meaningful for the development of an improved system when the committees operate in relative independence from the Legislative Council, at least in the substantive decisions they make on bills assigned by the Council. In this way, a broad participation in public matters would be possible for

²²"It is the legislative intent that (1) the Legislative Council, reduced in size to 20 members, is intended ordinarily to function as a steering or rules committee, appointing committees, assigning projects for study, supervising research and other work of its committees, and, finally, receiving from them their conclusions and recommendations to be considered for submission to the General Assembly," An Act to repeat and re-enact, with amendments, Sections 27, 28, and 35 of Article 40, Annotated Code of Maryland.

²³Interview with Dr. Carl Everstine, August 31, 1968.

more members of the Legislature, with the Council acting mainly to appoint committees, assign projects, and study committee reports and recommendations without veto power or excessive control. The confidence expressed by the Sun report on these major administrative and procedural changes would then be justified:

LEGISLATORS MAP INTERIM CHANGES

Rules Unit To Study Major Legislative Council Shifts

Annapolis, Aug. 15--Legislative leaders decided tonight to move toward major revision of the between-session activity of the General Assembly.

The powerful Rules Committee of the Legislative Council instructed its secretary to draw up a plan which would create permanent joint committees to operate between sessions under the direction of a steering committee of top legislative officers.

Follow Present Structure

The legislative Council itself would be reduced from 30 to 20 members and its function would change from that of an investigative group to that of channeling proposed legislation and studies to other committees.

But the Council, as the Policy Steering Committee, would retain the power to approve proposed bills after they are studied by the joint committee and before the bills go to the full assembly for action at the annual 70-day session.

The new interim joint committees would follow closely the present committee structures in the House and Senate during the sessions.

The revisions, still in the early stages of planning, are designed to bring every one of the 185 legislators into between sessions roles and put them on a year-round duty basis.

Tonight's meeting of the council Rules Committee saw general approval from both senators and delegates for the plan, introduced by Delegate Marvin Mandel (D., 5th Baltimore), speaker of the House.

Senator William S. James (D., Harford), president of the Senate, had suggested that the "upper chamber" might not respond kindly to the plan, since on each joint committee the senators would be in a minority.

Other senators on the Rules Committee pointed out, however, that the interim committees would only be able to recommend actions and that the Senate would have veto power over their recommendations during the assembly sessions.

4 to 5 New People

Carl N. Everstine, secretary and research director of the Legislative Council, said that providing the committees with year-round staff members would probably add only "four or five" people to the payroll.

The plan for expanding the "off-season" duties of the legislators apparently will not include boosting their basic pay, but members of the legislative council now receive \$20 for each meeting they attend.

The plan, to be put in written form by Mr. Everstine, will be returned to the Rules Committee next month for further consideration.

The move toward a more full-time Legislature won the backing of the chairman of the Citizens Committee on Maryland Government. George S. Wills, chairman of that committee, came to the session tonight to call the revisions as important to State Government as constitutional reform.

CHAPTER XIV

SUMMARY AND CONCLUSIONS

A. THE UNCERTAIN RELATIONSHIP OF LEGISLATIVE
REAPPORTIONMENT AND REORGANIZATION
TO POLICY OUTCOMES

American state legislatures have changed much since the founding of the Republic. As noted in Chapter II, early state charters vested significant constitutional powers in their legislative branches, primarily as a means of protection against the excesses of executive power that had once been exercised by British colonial governors. In the sweep of American political history, the state representative assemblies themselves became infected with political corruption and were increasingly subject to the cross pressures of self-serving interest groups. As a result, the large grants of power enjoyed by early legislatures were replaced in the latter half of the 19th century by constitutional restrictions ranging from specified lengths of session and minimal salaries to limitations on the exercise of legislative oversight.

Reform and reorganization of the state legislative process has, in part, been predicated upon the view that the legislature must do more than deliberate, discuss, and delay. As was noted in Chapter II, experienced lawmakers recognize their function as

arbiters rather than initiators of public policy--"we're the policy-making body for the state government, and basically we should give leadership necessary to meet the problems the state faces. In practice, it comes from the executive branch."¹

From the preceding observation, it is arguable that a passive role has been traditionally acceptable for some participants in the legislative process. However, it is equally arguable--and may become more so--that the complexity of contemporary legislation prevents that role from being assigned to state assemblies. The technical provisions of many bills--particularly in the economic, scientific and health fields--will require more substantive analysis in the drafting and committee review process. Executive expertise does not imply abdication of legislative responsibility under the separation-of-powers concept, particularly in a period of increased state participation in Federal domestic programs.

Reform has also been directed at reducing the parochial influence that frequently pervades a state assembly. As Thomas R. Dye has noted, "Legislatures function to represent locally organized interests, interests which are manifested in local rather than statewide constituencies."² Legislators have deep roots in their

¹John C. Wahlke et al., The Legislative System, p. 255.

²Thomas R. Dye, "State Legislative Politics," Chapter 5, Politics in the American States, ed. Jacob and Vine, p. 201.

local communities, and while such a "grass-roots" ethos has been thought of as thoroughly American, constituency parochialism has appeared to deny the process of economic and social changes that has been occurring in the fifty states since World War II. To a certain extent, rural parochial interests have been reduced by reapportionment through which growing urban and suburban populations can be more adequately represented in state legislatures.

But has reapportionment brought about any significant policy and legislative changes in behalf of geographic areas that had been previously underrepresented? According to Dye,

On the whole, the policy choices of malapportioned legislatures are not noticeably different from the policy choices of well apportioned legislatures. Most of the policy differences which do occur turn out to be a product of socio-economic differences among the states rather than a direct product of apportionment practices. Relationships which do appear between malapportionment and public policy are so slight that reapportionment is not likely to bring about any significant policy changes.³

An analysis by Herbert Jacob on the impact of malapportionment on public health expenditures, two-party competition, and the distribution of state highway funds in the fifty states has failed to establish a direct relationship between underrepresentation in urban-suburban areas and specific policy decisions of legislatures."⁴

³Thomas R. Dye, Politics, Economics, and the Public: Policy Outcomes in the American States (Chicago: Rand McNally and Company, 1966), p. 280.

⁴Herbert Jacob, "The Consequences of Malapportionment: A Note of Caution," Social Forces (Winter 1964), pp. 256-261. See also Robert G. Dixon, Jr., "Policy Impact of Malapportionment and Reapportionment," Democratic Representation: Reapportionment in Law and Politics (New York, London, Toronto: Oxford University Press, 1968), pp. 574-581.

The 1969 sessions of the Maryland and Virginia legislatures have been assessed as productive, in terms of innovative and progressive legislation. Although it is difficult to establish a causal relationship, both of these states have reapportioned assemblies that have been undergoing internal reorganization. In Maryland, it must be noted that the 1969 legislative productivity was, in no small part, caused by the legislative experience of former Speaker, now Governor Marvin Mandel.

As with reapportionment, legislative reorganization would appear susceptible to correlation with policy outcomes. In a recent study, Dr. John Grumm hypothesized that the degree of "professionalism" in or reorganization of a legislature might be responsible for some differences in legislative output and, by inference, perhaps more "progressive" legislation. However, his findings revealed that the professional status of the legislature appeared to make a difference in only one policy area, "welfare liberalism," where the analysis showed that "the professional legislatures were somewhat more liberal than the amateur ones. . . ."⁵

But the Grumm study reported a low degree of correlation between professionalism and other policy areas of governmental size, financial centralization, progressive taxation, and governmental expansion. As components of "professionalism," he cited (1) compensation of legislators, (2) total length of sessions during the

⁵ John Grumm, "Determinants of Legislative Output" (Paper written for the Citizens Conference on State Legislatures, 1967), p. 35.

1963-64 biennium,⁶ (3) expenditures for legislative services and operations during the same biennium,⁷ and (4) a "legislative services" score.⁸ According to Dr. Grumm, these components do not necessarily create different policy outcomes from those legislatures that have not undergone significant change through the politics of reform. However, evaluation of legislative reorganization is a relatively new field of quantitative analysis--this type of study should be pursued for Maryland's and other legislatures, as more data become available in the future.

B. RESPONSIVENESS, RESPONSIBILITY,
AND PUBLIC PARTICIPATION

Reorganization of the Maryland General Assembly is not a completed process, nor has it been under way a sufficiently long period of time to evaluate its impact upon legislative output--both in terms of quantity and quality of bills introduced, enacted, and defeated. What then is the justification for reorganization or modernization of the state legislative process? In its contemporary context, constitutional, administrative and procedural

⁶Book of the States, 1966-67, pp. 62-63.

⁷These are the figures reported under "Expenditures on the Legislative Branch" in the U.S. Bureau of Census, Compendium of State Government Finance in 1964 (Washington, D.C., 1964). The report includes all expenditures for the operation and maintenance of the legislature, its facilities and services, less the total amount paid for legislative compensation.

⁸See Calvin W. Clark, A Survey of Legislative Services in the Fifty States (Kansas City, Missouri: The Citizens Conference on State Legislatures, 1967).

change in state legislatures may only create an "atmosphere" for improved legislation. The criteria for "improved" may also be uncertain, or at least not accurately measurable. Presumably, improved legislation is the product of study and research about the complex subjects that find their way into contemporary state law, from air and water pollution regulations to appropriations for medicaid payments. And presumably improved legislation results from assembly action that is responsive to the demands and needs of the public.

Chapter II related "responsible" action by a legislature to (1) accountability for decisions made and (2) rational explanation, in terms of the procedures by which legislation is enacted or defeated. "Responsive" action was equated with a legislature's receptivity to certain inputs that are considered integral parts of the political policy process of state government. In the context of the Eastonian model, these inputs are demands on, or support of, the political system. In legislative terms, demands are the efforts of public, interest groups, or legislators themselves to secure enactment or defeat of proposed laws. Support is provided by the cooperative participation of individuals or groups through obedience to laws, payment of taxes, and acceptance of election outcomes.

"Responsible" evaluation of technical or costly legislative proposals and "responsive" action to requests or demands may be contradictory, as noted in Chapter II. In other words, if a

legislature responds quickly to public demand, then the result could be hasty or ill-conceived legislation. Or, if the legislative process fosters delay and inaction in the guise of thorough analysis and review, then the public will may be ignored. These two apparent contradictions are not completely reconcilable nor is the public will crystal clear because many viewpoints are brought to bear in the political process. Perhaps a partial reconciliation lies in more public concern or participation in the legislative process.

The "participatory democracy" concept carries certain risks, as exemplified by the defeat of the proposed Maryland Constitution in 1968. Less risk may exist in the small selected vote on referenda issues, "where the interested citizen--the one who has taken the trouble to read and understand--decides the issue."⁹

This concept of electoral participation, as analyzed by Maryland Constitutional Convention president H. Vernon Eney, is outweighed, in his judgment, by "the purely philosophical reason--that involvement of people, voters, everyone in the processes of government and elections is good and is an end of government itself."¹⁰ However, a new State constitution suffered defeat at the hands of a large public participation in deciding a complex

⁹ Testimony of H. Vernon Eney, President of the Maryland Constitutional Convention, Transcript of Proceedings, Mid-Atlantic Regional Conference on Strengthening the Legislature, The Johns Hopkins University, February 15, 1968, pp. 160-161.

¹⁰ Ibid.

governmental issue by a single "yes" or "no" vote. Does that defeat illustrate a disadvantage of mass public participation in governmental decisions and in the process by which government is reformed?

C. THE "INCREMENTAL" V. THE "WHOLESALE" METHOD OF REFORM

The answer to the preceding question is "no," provided that a strategy of governmental reform incorporates public participation on a basis which maximizes public understanding of proposed changes in the legislative process. Charles E. Lindblom has said:

Policy making in many political systems is typically, though not always, a part of a political process in which the only feasible political change is that which changes social states only by relatively small steps. Hence, decision makers typically consider, among all the alternative policies that they might be imagined to consider, only those relatively few alternatives that represent small or incremental changes from existing policies. In this sense, too, decision making is incremental. In short, policy makers and analysts take as their starting point not the whole range of hypothetical possibilities, but only the here and now in which we live, and then move on to consider how alterations might be made at the margin.¹¹

In combination, Lindblom's and Eney's analyses have relevance for the politics of legislative reform, and also for constitutional revision. Because of differences between the Constitutional Convention and the Citizens Commission about campaign tactics to secure ratification of a new Maryland constitution, the implication emerges

¹¹ Charles E. Lindblom, The Intelligence of Democracy: Decision Making Through Mutual Adjustment (New York: The Free Press, 1965), p. 144.

from Chapter XII that a "hard-sell," simplistic campaign might have lured the Maryland voter toward accepting comprehensive constitutional reform. That desired result may have been difficult to achieve, even with the most adroit public relations efforts in behalf of a new charter, particularly when one considers the impact of unforeseen events on the campaign, such as the April 1968 riots in Baltimore. In order to meet the criterion of "involvement of everyone in the processes of government," a more substantive means by which political reform could be achieved is the incremental method.

Practice of the politics of reform on an incremental basis may mean that incrementalism is appropriate in a "time" and "compromise" framework. An incremental process of reform implies the inclusion of a reasonable length of time for a series of changes to occur within the framework of public understanding. And to effect that understanding, some adjustment of ultimate goals may be necessary. This approach does not imply a denial of substantive reform; rather, it is a method by which change can be explained, understood, and accepted.

D. THE EAGLETON AND THE CITIZENS COMMISSION REPORTS IN THE CONTEXT OF INCREMENTAL REFORM POLITICS

From the analysis of the Eagleton and Citizens Commission reports in Chapter VII and Appendix A, it is arguable that the subject matter of these two programs contains less controversy and

public emotion than many of the issues faced by the Maryland Constitutional Convention. It is also arguable that legislative reform in Maryland was strengthened by an advantage not possessed by the constitutional revisionists. That advantage consisted of two separate programs for General Assembly reorganization that sought the same general objectives through somewhat different but, at the same time, complementary strategies. The Eagleton Institute sought to persuade primarily through quantitative research, structured interviews and statistics that compared Maryland's legislative procedures with those of other states. The Citizens Commission, as an "in-state" organization, operated in the context of Maryland politics in order to generate a public climate for acceptance of legislative reorganization.

Chapter XIII indicates that the leaders of the Maryland General Assembly may have been more disposed to accept the specific recommendations of the Eagleton Institute, at least with respect to committee reorganization. In part, this could be attributable to the fact that Eagleton was a General Assembly-sponsored study. The more likely reason, as evidenced by Appendix A, may be that Eagleton spells out its recommendations in more detail than does the Citizens Commission, thereby offering a relatively specific reorganization road map to the Legislative Council and other legislative leaders. The use of political strategy is employed by Eagleton primarily where its report refers to Citizens Commission recommendations with which Dr. Rosenthal and his associates concur.

In this sense, the two reports complement each other and strengthen the case for adoption of certain recommendations.

The Citizens Commission report reflects the reformist orientation of the Commission as an agent of political change. As a complement to a comparative analysis of the two reports, this dissertation has analyzed legislative reorganization in Maryland, primarily as implementation of this kind of political reform-- through public hearings, development of support from the news media, and interaction and negotiation with members of the General Assembly.

It must be emphasized that the relatively few major differences between the Eagleton and Citizens Commission reports, as examined in Chapter VIII, were muted by both groups in order to present a relatively unified approach. This approach was not part of any "grand design," but rather the result of fortuitous timing in which the Citizens Commission report had been released before the Eagleton study had begun. Contact and exchange of information between the staffs of the two groups enabled a common approach to emerge, that of developing legislative response to reorganization and recognizing that such response could not emerge as one basic decision within a limited framework of time. Such was the commitment to meaningful but incremental change by Maryland's legislative reformers from 1966 to 1968.

E. THE IMPLICATIONS OF LEGISLATIVE REFORM FOR OTHER
STATES AND FOR DEMOCRATIC PROCESS

This dissertation has concluded that the effect of reorganization upon output is difficult to measure, at least at this comparatively early stage in the legislative reform movement. Another conclusion maintains that reform is more effectively accomplished through an incremental process by which public understanding and political support can be developed. Both of these conclusions might imply that the politics of reform is a slow, tortuous process that may not produce comprehensive change. The process may be slow, but the "Citizens Commission" method of developing public participation in reforming state legislatures has grown from three such groups in 1965 to programs currently under way in 15 states.¹²

Most of the reforms proposed for state assemblies have been confined to changes in constitutional powers, administration, and procedural rules. There has been little evidence of a uniform set of rules or even a single philosophy by which reorganization can accomplish the broad purpose of increasing the responsiveness and responsibility of a legislature. The differences known to exist from state to state make it difficult to generalize about the results of structural and procedural change on the distribution of political power within the representative branch of government.

¹²Interview with Mr. George Morgan, National Field Director of the Citizens Conference on State Legislatures, April 21, 1969.

The Maryland experience indicates that legislative leaders will respond to change. But, as political elites, they will not give up power or have it sharply altered without compensation. The compensation may come in the form of tangible benefits, such as salary increases and administrative improvements, or it may come through increased power and prestige for the legislative branch itself. Both forms of compensation can be achieved through the cooperative efforts of legislator and reformer, aided by the catalyst of public support.

It is in the area of power and prestige for the legislative branch, however, where the greatest implications of legislative reform exist--both for the states in our federal system and for the democratic process itself. Thomas Dye has identified two general propositions about the functions of legislatures in state political systems: (1) They function as arbiters of public policy rather than initiators and (2) they function to inject a parochial influence in the governmental decision-making process.¹³ Assuming the validity of these two propositions, the reformer must recognize them as limitations upon the power of the legislative branch in relation to other parts of government--primarily because they signify reactive, as opposed to innovative, functions.

The power of the state legislature is not dormant nor always negative, however. The representative branch is sometimes the

¹³Thomas R. Dye, "State Legislative Politics," Politics in the American States, ed. Jacob and Vines (Boston: Little, Brown and Company, 1965), pp. 151-207.

forum where new needs are expressed and innovation proposed. Advocacy and debate on an assembly floor are often catalysts for change, frequently challenges to the vast administrative machinery of the governor. But in terms of actual productivity, the legislature is frequently a forum for delay and inaction. Prior to the post-World War II technological revolution and its resulting influx of economic and social legislation, inaction was almost a "traditional" part of state legislatures, deemed necessary in order that constituency opinion be felt and understood.

In part, inaction as a legislative response has been caused by malapportioned assemblies dominated by rural representatives who saw their power bases threatened by economic and social change. Also, the members of these same legislatures were, to an increasing degree, unable to meet increased governmental and constituency demands. This lack of response, often identified as "clinging to tradition" was in part caused by the sporadic and superficial nature of legislative work--from insufficient time to conduct a state's business every year or every other year to lack of effective bill analysis and committee procedures.

Since reapportionment became a viable public issue in the early 1960's, followed by the movement to reform operations and procedures, a perceptible shift has occurred in the role of the state legislature. That shift has been from the preservation of delay and debate to a more creative response to costly and comprehensive governmental programs, many of which derive from the national government and

require the matching of federal funds with state appropriations. As a result, legislation from the statehouse is more likely to be preceded by at least some evaluation from legislators or committees. A recent example is a Wisconsin legislative committee's review of the impact of DDT as a pesticide upon the surrounding environment. This sort of "problem analysis" is relatively new on the state level of government and may have begun to have its effect felt on the policy determinations of the Congress and executive agencies in Washington.

A third conclusion concerns the willingness of legislators to respond to the incremental change described earlier in this chapter. The Maryland experience indicates that there is a willingness of those who control a state legislature to reform it, provided there is public receptivity. The politics of reform can help create that receptivity so long as recommendations for change do in reality create reorganization that will improve the effectiveness of legislation and the caliber of study supporting that legislation. If political elites can be persuaded to readjust their traditional way of doing things, it is because their responsibilities will have more effect upon the processes of state government than prior to implementation of reforms.

Reforms must also be usable by legislative leaders who are familiar with the operations of the representative branch. If the recommendations can be justified as improvements, then even the

most progressive can be integrated into legislative administration and procedures. The proposed joint budget committee for the Maryland Senate and House is a case in point: a relatively fundamental change in the oversight function, this committee was approved primarily because it gives the General Assembly a more meaningful role in the State's financial decision-making.

As already noted, the state legislature is a logical forum for expression of public concerns in state government. And it is often at the state level where human actions are governed and regulated. Funds for job training of an unemployed person may be provided from the national government, but a state government's decisions about health, mass transit, and housing may have equal effect upon that individual's productivity in his environment. The role of the states in education alone makes the state legislature a critical branch of government in the future. Greater involvement of the national government in education notwithstanding, state legislatures seem destined to continue controlling the bulk of the money and setting the tone for educational instruction at all levels. In Maryland, the attitudes of legislators and credibility of legislative analysis may have strong bearing upon the future role the State will play in support of private education, as well as the financial support that heretofore tax-exempt institutions may have to provide their state government.

These two examples of unemployment and private education only serve to point out that the federal system is now meeting its

greatest test in America. And on the state level, legislatures are facing increased responsibilities in governmental decision-making no longer based solely on "intuitive feel" for a problem. In order to have validity for contemporary economic and social problems, state legislative decisions must be more and more based upon careful evaluation and allocation of available financial and human resources.

The technological age does not remove the need for the most important element in the state legislature--the responsible representative whose judgment is sound even under adverse conditions. However, that type of legislator may not be attracted to an environment that lacks credibility to both the participants and the public. The reorganization of a state legislature includes the preservation of valid tradition and the infusion of new procedures to enable political representation to accurately reflect contemporary needs. Herein lies the greatest challenge to those who practice the politics of legislative reform.

APPENDIX

APPENDIX A

CITIZENS COMMISSION AND EAGLETON REPORTS: COMPARISON OF RECOMMENDATIONS¹

Subject	Citizens Commission	Eagleton
Constitution		
Internal operations	V,1. The Commission recommends as a matter of broad policy that the new Constitution remain silent on internal legislative operations.	
Reapportionment	V,2. The Commission recommends that the new Constitution require the Legislature, at its first session following the approval of the Constitution by the voters, to establish mandatory and automatic provisions for legislative reapportionment following each decennial census.	
Vacancies in General Assembly	V,3. The Commission recommends that upon the occurrence of vacancies in the General Assembly, each party's appropriate state central committee be required to hold public hearings before making its recommendations to the Governor.	

¹Prepared by Dr. Carl Everstine and George S. Wills.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Length of Sessions	V,4. The Commission recommends removal of the Constitutional limit upon the length of legislative sessions. The Legislature should limit its annual session to 90 calendar days until such time as the legislative workload requires a longer session.	1. The new Constitution limit the length of the regular session of the legislature to ninety days.
Salary of Members	V,5. The Commission recommends that the establishment of legislative salaries by constitutional provision be eliminated. A statutory annual salary of \$6,500 coupled with the abolition of per diem payments, should be passed by the General Assembly for its members.	<p>90. The new Maryland Constitution provide that the members of the General Assembly shall receive such salary and allowances as may be prescribed by law.</p> <p>91. As soon as constitutionally feasible, the legislature should enact a compensation bill providing:</p> <ul style="list-style-type: none"> (a) A basic salary of \$8,500 for members of the General Assembly; (b) Salaries of \$10,500 for the Speaker of the House and the President of the Senate and \$9,500 for the majority and minority leaders and chairmen of all major committees; (c) The elimination of per diem during the legislative session, but continuation of \$35 per diem payments for committee work during the interim.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Unicameral General Assembly	V,6. The Commission recommends that the governor's Constitutional convention Commission promulgate a proposal for a unicameral legislature in addition to the existing proposal for a bicameral General Assembly.	
Special Sessions		2. The governor may convene a special session of the legislature at any time and must convene a special session upon the request of three-fifths of all the members of each house, but that such sessions be limited to not more than 30 days.
House and Senate Organization		
Consent Calendar	VI,1. The Commission recommends adoption of a consent calendar to provide for automatic referral of non-controversial bills to final reading after their being reported out of committee.	11. The General Assembly adopt a consent calendar and by legislative rule provide procedures, whereby noncontroversial bills can be enacted expeditiously and controversial ones will be screened out at some stage in the process.
Prefiling Bills	VI,2. The Commission recommends adoption of pre-filing procedures to encourage preparation and drafting of bills before the General Assembly session begins.	3. The General Assembly adopt procedures permitting any member or member-elect to pre-file bills with the secretary of the Senate and the chief clerk of the House after November 15 of each year.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Frivolous Amendments</p> <p>Deadline for Bills</p>	<p>VI,3. The Commission commends the Legislative Council for proposing a modification of House Rule 46 to prevent frivolous amendments from killing legislation.</p>	<p>4. The new Constitution not restrict the General Assembly's authority to determine deadlines for the introduction of legislation (thus deleting Art. 3, Sec. 27 of the present Constitution).</p> <p>5. Rule 35 of the Senate and House of Delegates be altered to provide for either of the following:</p> <p>(a) If the regular session is limited to seventy days, no bill shall be introduced in the Senate/House during the last thirty-five calendar days of a regular session, unless two-thirds of the members elected thereto shall so determine by affirmative vote of yeas and nays, and any bill so introduced shall be referred to the Committee on Rules, Procedure, and Organization.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Deadline for Bills (continued)		<p>6. Members of the Committees on Rules, Procedure, and Organization pursue the job of screening with utmost diligence, referring to standing committees only those bills whose late introduction can be properly justified.</p> <p>7. The General Assembly, by joint resolution, request the governor to make every effort to have executive bills introduced during the opening days of the session so that the legislature has ample time to give them the consideration they deserve.</p>
Split Sessions		<p>10. Particularly if the legislative session is extended to ninety days, the General Assembly try a split-session technique--convening for two weeks for organizational and introductory purposes, recessing for three weeks to enable committees to conduct day-long hearings on the budget, and then reconvening for committee and floor work during the remaining eight weeks.</p>
Previous Question		<p>12. The Senate alter its rules on motions to include as 61.7 a provision similar to that of the House of Delegates: For the previous question. The motion is not debatable, and if carried shall preclude all further debate and bring the Senate to a direct vote upon the immediate question before it. The motion for the previous question may be made on any debatable motion before the Senate.</p>
Information Office		<p>85. A Legislative Office of Public Information be created to facilitate the flow of communications from</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Information Office (continued)</p> <p>Orientation and Education</p>		<p>the General Assembly to the press and public, denying legislative access to none but serving to bring together those people who have information and those who might benefit from it.</p> <p>61. The legislature's orientation program for new members be substantially improved by:</p> <ul style="list-style-type: none"> (a) Holding two- or three-day sessions after each general election and before the General Assembly convenes, (b) Including as participants legislative leaders, committee chairmen, legislative staff, and heads of major departments and agencies, (c) Requesting the American Political Science Association to provide its services in developing the next orientation program. <p>62. The Joint Committee on Legislative Policy and Management, or a similar leadership group, direct staff or employ special consultants to prepare basic information manuals for all members of the General Assembly.</p> <p>64. The Joint Committee on Legislative Policy and Management consider jointly with the University of Maryland the initiation of a series of seminars focused on substantive problems of concern to members of the General Assembly.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
House, Number of Committees (cont'd)		<p>Ways and Means - 35 members Judiciary - 35 members Economic Affairs - 24 members State Affairs - 24 members Health, Education and Welfare - 23 members</p>
Assignment of Bills	VII,3. The Commission recommends that the rule committee in each house assume responsibility for assignment of bills.	<p>17. Each member of the House serve on one, but no more than one, of these major legislation committees.</p> <p>20. Presiding officers of the House and Senate define, as nearly as possible, areas of responsibility and refer bills falling within these jurisdictions to appropriate legislation committees.</p> <p>21. Presiding officers of the House and Senate assign bills authorizing new or substantially altered programs to the substantive committees in whose jurisdiction they properly fall as well as the Ways and Means and Finance Committees which must decide on appropriations.</p> <p>22. The General Assembly, through a proposed Joint Committee on Legislative Policy and Management, examine during the interim period of 1968 the possibility of incorporating into House and Senate rules provisions governing committee jurisdictions and the referral of bills with expenditure implications.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Interim Committees	<p>VII,4. The Commission recommends that House and Senate substantive committees be required to function on a year-round basis.</p>	<p>24. The new Constitution include a provision, such as the one proposed by the Constitutional Convention Commission, providing that each house may permit its committees to meet between sessions of the General Assembly.</p> <p>25. Even before adoption of a new Constitution the General Assembly establish three joint interim committees, each of which parallels and draws members from committees of the House and Senate.</p> <p>26. These three joint interim committees be organized in the following manner: A Joint Committee on Finance, with 32 members, 21 from House Ways and Means, and 11 from Senate Finance; A Joint Committee on Judiciary, with 32 members, 21 from House Judiciary and 11 from Senate Judicial Proceedings; A Joint Committee on Economic and Social Affairs, with 44 members, 33 from House Economic Affairs, State Affairs, and Health, Education and Welfare and 11 from Senate Conomic Affairs.</p> <p>27. Each joint interim committee establish standing subcommittees, which would conduct studies and draft proposals for review by the full committee.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Interim Committees (continued)		<p>28. Joint interim committee decisions, which authorize investigations or adopt reports and proposed legislation, be contingent on agreement by majorities of both House and Senate members.</p> <p>29. Chairmanships and vice-chairmanships of joint interim committees rotate annually or biennially between the chairmen of House and Senate committees; subcommittee chairmanships rotate as well, so that combined chairmanships during any given period are divided between the houses as equally as practicable; and the Speaker of the House designate in alternate periods the chairman of the Joint Committee on Economic and Social Affairs.</p> <p>30. Appointments to joint interim committees be made by the chairmen of the relevant standing committees, with the advice and consent of the Speaker of the House or the President of the Senate.</p> <p>31. Special interim committees be established if circumstances so warrant, and their creation, membership, and responsibilities be within the authority of the Joint Committee on Legislative Policy and Management.</p> <p>32. Insofar as possible, no member, with the exception of those serving on the Joint Committee on Legislative Policy and Management, serve on more than one interim committee.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Interim Committees (cont'd)		<p>33. Each joint interim committee establish an advisory panel, composed of public members, which can be drawn upon for information and advice.</p> <p>34. Joint interim committees meet in plenary session primarily to organize, make assignments, and deliberate on the work done by subcommittees, but subcommittees meet more frequently in order to accomplish the tasks assigned.</p>
Joint Budget Planning	VII,5. The Commission recommends establishment of a joint budget-planning committee. (See Budget and Finance, Recommendation #4.)	See under "Budget and Finance."
Legislative Council's Policy and Management	<p>VII,6. The Commission recommends that the Legislative Council be strengthened in the areas of policy-making and coordination of year-round committee work.</p> <p>VII,7. The Commission, therefore, recognizing the necessity for strong General Assembly leadership by the Legislative Council, recommends that</p> <p>(a) the Speaker of the House and the President of the Senate continue to serve on the Council as vice-chairman and chairman, respectively, and each</p>	<p>23. The Legislative Council, as it now exists and as provided for in Art. 40, Sec. 27 of the Code of Maryland, be abolished.</p> <p>49. Legislation be enacted to establish a Joint Committee on Legislative Policy and Management, providing that:</p> <p>(a) It be composed of eight members of the Senate and eight members of the House--to include ex officio from the Senate, the President, Majority Leader, the chairmen of the Finance and Judicial Proceedings Committees, and additional</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Legislative Council's Policy and Management (cont'd)</p>	<p>should appoint the other nine members from each house with the approval of each house and with proportionate minority representation. (The Commission assumes that the two minority leaders would be appointed automatically to the Council.)</p> <p>(b) The Legislative Council should serve as an out-of-session rules committee to route proposed legislation to the appropriate substantive committees.</p> <p>(c) The Legislative Council should exercise administrative supervision of the legislative post-audit (See Budget and Finance Recommendation #7).</p> <p>(d) The Legislative Council should assume overall supervision of General Assembly employees and administrative agencies, and</p> <p>(e) The Legislative Council should assume a supervisory role over the activities of our-of-session committees, and upon public showing or probable cause, the Legislative Council should be granted the power to remove committee chairmen and members from committees for malfeasance, misfeasance, or nonfeasance while the Legislature is not in session.</p>	<p>members to be appointed by the President, and ex officio from the House, the Speaker, Majority Leader, Minority Leader, the chairmen of the Ways and Means and Judiciary Committees, and additional members to be appointed by the Speaker.</p> <p>(b) Two members from the Senate and two from the House represent the minority party.</p> <p>(c) In alternate years or biennia, the Speaker of the House and the President of the Senate preside as chairman, while the other serve as vice-chairman.</p> <p>(d) The Committee organize during the opening days of the session and be required to meet at least ten times throughout the year.</p> <p>(e) Minutes of each meeting be taken and distributed to all members of the General Assembly.</p> <p>(f) Duties and responsibilities of the Committee include: decisions on the nominations of administrative assistants; coordination of operation of the two houses during the legislative session; review of legislative organization, rules, procedures, working conditions and physical facilities; supervision, coordination and support of</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Legislative Council's Policy and Management (cont'd)	<p>The Legislative Council should be a vigorous group, and should be a guide to the entire General Assembly. In order to achieve this vitality, the Council, like Caesar's wife, must be beyond reproach. To this end, the Commission believes that the Council members should be those Senators and Delegates who possess legislative ability and experience. Members of the rules committees, which operate only during the session, might be among the candidates appropriate for appointment to the Legislative Council.</p>	<p>work done by joint interim committees; supervision of the Division of Legislative Services; and the development of policies to govern the conduct of members, officers and employees of the legislature. (g) The Committee report annually on its activities to the General Assembly.</p>
Investigative Powers	<p>VII,8. The Commission recommends that legislative committees be given full investigatory powers, including the right to subpoena witnesses, hold hearings, and receive testimony under oath.</p>	<p>48. Committees have full investigative powers, including the power to subpoena witnesses and receive testimony under oath, and the Joint Committee of Investigation be abolished.</p>
Committee Records and Reports	<p>VII,9. The Commission recommends that all committees keep a record of their activities, which would include minutes of all committee meetings and a record of testimony produced in hearings.</p>	<p>43. Committee chairmen have minutes of each meeting taken and, at their discretion, have transcripts made of testimony on major bills.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Committee Records and Reports (cont'd)		<p>44. The House amend Rule 40 to provide that lists prepared by committees on action taken at each meeting be distributed to all members of the House.</p> <p>45. Committees, operating during the session, prepare brief reports on significant bills, explaining their recommendations on amendments and presenting their arguments for or against passage.</p> <p>46. Committees, operating during the interim, prepare detailed reports on studies they have conducted and proposals for legislative action.</p>
Time for Meetings	<p>VII,10. The Commission recommends that sufficient time be allotted during General Assembly sessions for committee meetings.</p>	
Hearings	<p>VII,11. The Commission recommends that committees and the Legislative Council adopt a policy of holding public hearings with adequate public notice so that interested members of the public may attend.</p>	<p>40. Committee hearings be improved by requesting witnesses, particularly those from the executive branch, to submit testimony in advance.</p> <p>42. Announcements of hearings be made at an earlier date than presently and notification of interested individuals and groups be the responsibility of the committee.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Joint Hearings	VII,12. The Commission recommends that Senate and House substantive committees hold joint hearings whenever possible.	41. Subcommittees of House and Senate hold joint hearings whenever feasible.
Use of Subcommittees		18. Chairmen and members of legislation committees establish subcommittees and designate chairmen, to be consented to by the House or Senate during the early days of the session, or, in special cases, later on.
Committee Procedure		19. At the discretion of the committee chairman, subcommittees be referred bills for study and recommendation to the full committee. 47. The House and Senate adopt a rule requiring that each committee and joint interim committee adopt their own rules of procedure at the beginning of a legislative session or interim period, that a majority of members of each committee shall constitute a quorum, and that a majority of such quorum has the power to decide measures before the committee.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Rules Committee		52. House and Senate Rules be revised to provide that present rules committees be redesignated the committee on Rules, Procedure, and Organization and that each consist of eight members, all of whom are concurrently members of the Joint Committee on Legislative Policy and Management.
Budget and Finance	VIII,1. The General Assembly and the Executive Budget--the Commission recommends that the State of Maryland retain the "balanced budget" provision of the Constitution and the authority to borrow on bonded capital improvements. The debt service on such improvements should, however, be appropriated from general revenues.	67. The new Constitution retain provisions permitting the General Assembly to increase budget items relating to the legislative or judicial branches and to reduce items relating to the executive branch.
Budget and Bond Bill		68. The budget bill shall become law when passed by both houses of the General Assembly and shall not be subject to veto by the governor. 69. The legislature play no formal role in the preparation of the budget, but legislative staff continue to attend executive budget hearings for purposes of acquiring information which will be useful in staff support of the finance committees.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Authorization-Appropriation	<p>VIII,2. Committee jurisdiction--money bills--the Commission recommends that the General Assembly not adopt a dual authorization-appropriation system. However, in view of the committee structure recommended in this report (see Committee Organization), legislation, or portions of the budget authorizing new programs or substantially altered programs, should be initially referred to and studied by a substantive committee for program evaluation, then presented to the Ways and Means Committee (House) or Finance Committee (Senate) for appropriation evaluation.</p>	
Joint Subcommittees	<p>VIII,3. Subcommittees--joint hearings--the Commission recommends that the House Ways and Means and Senate Finance Committees appoint joint subcommittees for the purpose of considering designated areas of the Executive Budget and that these subcommittees hold joint hearings on their budget section. The areas of consideration by these subcommittees should correspond with the board executive areas of budget consideration.</p>	<p>70. The House Ways and Means and Senate Finance Committees continue to devote their major attention during the first half of the annual session to budget bills, turning to other appropriation measures later when members have become well acquainted with executive requests for various programs and agencies.</p> <p>71. House Ways and Means and Senate Finance continue to hold hearings separately before full committees.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Joint Sub-committees (cont'd)</p>		<p>72. Joint subcommittees, which evaluate and make recommendations for budgetary changes, be re-organized as follows: (a) A capital budget subcommittee continue to have responsibility for capital improvements. (b) Three additional subcommittees be constituted so that each one has responsibility for certain broad areas of state programming, such as economic affairs, state affairs, and health, education, and welfare. (c) Subcommittees provide more detailed explanations in support of their recommendations for budget decreases to their parent committees.</p> <p>73. Committee and subcommittee chairmen advise members to direct their critical attention to program evaluation and program expenditure rather than to technical details and the costs of specific line items.</p>
<p>Joint Planning Committees</p>	<p>VIII,4. Joint Budget-Planning Committee and Bureau of Fiscal Research--the Commission recommends that a Joint Budget-Planning Committee be established and that the State Fiscal Research Bureau provide fiscal analysis and research for that committee. It</p>	<p>74. A Joint Interim Committee on Finance be established and: (a) That it be composed of 21 members from House Ways and Means and 11 members from Senate Finance. (b) That it be divided into three standing subcommittees, one on Taxation and Fiscal Matters, another on Capital Budget, and the third on the Current Expense Budget</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Joint Planning Committees (cont'd)</p>	<p>is further recommended that members of this Joint Budget-Planning Committee be selected from the Senate Finance and House Ways and Means Committee.</p>	<p>74. (c) Each subcommittee be staffed by at least one professional from the Bureau of Fiscal Research. (d) These subcommittees conduct studies, evaluate executive performance, draft reports, and prepare whatever legislation necessary.</p> <p>75. If it is imperative that adoption of a system of joint interim committees be postponed for a year or two, in the meantime the legislature proceed to establish a joint budget committee to operate during the interim period.</p>
<p>Fiscal Notes</p>	<p>VIII,5. Fiscal Notes--The Commission recommends that the General Assembly require that presentation of the Budget, or other legislation affecting appropriations or revenues, be accompanied by fiscal notes, showing the long-term cost budget impact of new or expanded programs. These fiscal notes should include brief explanations of the advantages from any increased expenditures and new or expanded programs. The Commission also recommends that a summary of the Executive Budget, with an index to the full sections, be made available to members of the General Assembly and the public.</p>	<p>78. A fiscal note procedure be adopted which provides that: (a) The Bureau of Fiscal Research receive from Legislative Reference a copy of every bill drafted by that agency. (b) The bureau decide whether a bill substantially increases or decreases state revenue, appropriations, or fiscal liability, and if so prepare a fiscal note after consultation with the appropriate state department or agency. (c) A mimeographed note estimating fiscal impact be sent to the bill's sponsor and to each member of the committee to which the bill has been referred. (d) Where committee amendments have substantial fiscal effects, the bureau</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Legislative Audit	VIII,7. Legislative Auditor--The Commission recommends creation of the office of Legislative Auditor under the supervision of the Legislative Council and that of the Auditor with his staff be solely controlled and paid by the General Assembly out of its administrative budget.	<p>79. The post-audit function be transferred by statute from the executive to the legislative branch.</p> <p>80. A Bureau of Post Audit, headed by the state auditor and including the present staff of his office, be one of several separate agencies in the Division of Legislative Services, accountable to the Joint Committee on Legislative Policy and Management and working with the finance committees and the Bureau of Fiscal Research.</p> <p>81. In addition to examining the legality and procedural propriety of financial transactions by state agencies, the Bureau of Post Audit collect information which will aid the General Assembly in determining whether expenditures of appropriations are efficiently and effectively accomplishing the legislature's policy objectives.</p>
State Treasurer	VIII,8. State Treasurer--The Commission recommends that the Constitution be amended to transfer the appointment of the State Treasurer to the Governor, and that a member of the General Assembly or an appropriate representative, serve on the board of public works.	

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Fiscal Notes (cont'd)		<p>quickly revise fiscal-impact information.</p> <p>(e) When a bill is reported to the floor, fiscal-impact information not only be orally communicated by a committee chairman but it be included in a brief committee report or some other memorandum distributed to all members of the house.</p> <p>(f) Member proposing amendments from the floor also be required to report their fiscal effects.</p>
Floor Consideration of Budget	<p>VIII,6. Floor consideration of Budget-- the Commission recommends that the Budget be considered on the floor for final reading not later than 15 to 20 days prior to the end of the regular session.</p>	<p>8. The present constitutional provision which allows either house to consider other appropriation bills, but prohibits final action by both houses until passage of the budget, be retained.</p> <p>9. The legislature determine, either by rule or statute, a deadline date for final passage of the budget, without provision for the budget as presented automatically becoming law.</p> <p>(a) In the case of a seventy-day session, the budget be enacted within fifty days of its submission.</p> <p>(b) In the case of a ninety-day session, the budget be enacted within sixty days of its submission.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Staff for Money Committees</p>	<p>VIII,9. Ways and Means, Finance Committees' staff--although the Bureau of Fiscal Research performs many important functions for the Ways and Means and Finance Committees, these committees need additional competent staff, including at least two researchers (majority and minority) and a committee clerk together with secretaries to work on taxation, capital improvements and other items of committee business not relating directly to the budget.</p>	<p>76. Staff of the Bureau of Fiscal Research be expanded and organized so that:</p> <ul style="list-style-type: none"> (a) One member focus attention on the capital budget, serving the Subcommittee on the Capital Budget throughout the entire year. (b) Three members concentrate on broad areas of the operating budget, paralleling the substantive jurisdictions of the proposed House committees on Economic Affairs, State Affairs, and Health, education and Welfare and working with functional subcommittees of Ways and Means and Finance as well as the proposed Current Expense Budget Subcommittee of the Joint Interim Committee on Finance. (c) All of the four above-mentioned professionals also provide specialized information to substantive legislation committees and individual members of the House and Senate. (d) Two members concentrate on tax and related problems, serving the two standing committees on finance during the session and the Subcommittee on Taxation and Fiscal Matters during the interim and responding to individual requests as the need arises. (e) Two members have primary responsibility for fiscal notes and also support whatever special committees need fiscal assistance during the interim period.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Staff for Money Committees (cont'd)		<p>77. The Bureau of Fiscal Research perform the following functions:</p> <ul style="list-style-type: none"> (a) Continue to collect, tabulate, and publish basic data on local government finance in Maryland. (b) Assist interim committees, particularly Joint Finance, in reviewing the performance of executive departments and agencies, evaluating certain programs, assessing special funds, and considering the impact of federal aid. (c) During the session, assist in budgetary review by attending executive hearings, briefing committee members before legislative hearings begin, helping to schedule hearings, bring to the attention of members major policy questions and alternative courses of action, program levels, or priorities, and issue a relatively brief document analyzing salient parts of the governor's budget.
Budget Document		<p>82. The budget document contain more complete and, if possible precise information on program purpose, administrative ends and means, past accomplishments, and future objectives, and particular attention be devoted to the development of meaningful criteria of program performance.</p> <p>83. The budget document include the following types of information:</p> <ul style="list-style-type: none"> (a) An introductory explanation, mainly to facilitate understanding of the organization and terms of the budget. (b) Expenditure information for a period of at least three prior years. (c) Estimates of expenditures beyond the forthcoming fiscal period. (d) Requests made by state agencies as well as the governor's budgetary recommendation.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Budget Document (cont'd)</p> <p>Legislative Staff, Facilities and Automation</p> <p>Full-time Staff</p>	<p>IX,1. The Commission recommends that two full-time, year-round, professionally trained, career staff members (majority and minority) and one secretary be employed for each major committee of the Senate and House.</p>	<p>(e) A distinction among program amounts sought for (1) continuing the present level of services, (2) changing the operating level of services, and (3) providing new and different services.</p> <p>85. A document to accompany the budget explain major policy considerations and decisions implicit in the governor's budgetary recommendations.</p> <p>35. Each major committee of the House and Senate (including Finance, Judicial Proceedings, and Economic Affairs in the Senate and Ways and Means and Judiciary, as well as the proposed committees on Economic Affairs, State Affairs, and Health, Education and Welfare in the House) be authorized to employ a qualified administrative assistant, as well as a secretary on a full-time basis throughout the entire</p> <p>36. During interim periods, committee staff be assigned to the appropriate joint interim committee to assist in its work.</p> <p>37. The administrative assistant be responsible to the committee through the office of chairman.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Full-Time Staff (cont'd)		<p>38. Chairmen of each major committee of the House and Senate nominate candidates for administrative assistant positions and nominations be reviewed and decided on by the Joint Committee on Legislative Policy and Management.</p> <p>39. The Joint Committee on Legislative Policy and Management determine appropriate salary levels--generally comparable to those of other professional staff of the legislature--for administrative assistants with varying qualifications and experience.</p> <p>63. The Joint Committee on Legislative Policy and Management weigh seriously on a case-by-case basis the authorization of funds to employ consultants when requested by standing and interim committees with particular projects or studies to accomplish.</p> <p>87. The legislature employ sufficient secretarial personnel to support the work of standing and interim committees, to assist legislative service agencies, and to aid members during the course of legislative sessions.</p>
Administrative Assistants	IX,2. The Commission recommends that one legislative or administrative assistant be employed during the session for each of the following leaders: the	50. The Speaker of the House and President of the Senate each be authorized to employ, with the consent of the Joint Committee on Legislative Policy and Management, an administrative assistant, each of whom will serve primarily as staff to the Joint Legislative Committee.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Administrative Assistants (cont'd)	President of the Senate, the Speaker of the House, and the majority and minority leaders of each house. These assistants should serve in a legislative, advisory, and political capacity, and their appointments should be made directly by the appropriate leader.	51. The Minority Leaders of the House and Senate each be authorized to appoint an administrative assistant to serve minority party leaders and members.
Secretary for Leaders	IX,3. The Commission recommends that each of the Legislative leaders mentioned in Recommendation #2 be empowered to employ a permanent secretary year-round.	
Legislative Reference and Fiscal Research	IX,4. The Commission recommends that the staffs of the Legislative Reference Service and the State Fiscal Research Bureau be increased so that they will be capable of fulfilling their statutory functions.	<p>53. All legislative service agencies and staff be responsible exclusively to the General Assembly, and not to the governor, department heads, or other boards.</p> <p>54. For the most effective assistance in policy research, fiscal analysis, budgetary review, oversight of executive performance, bill drafting, and legal counsel, a Division or Department of Legislative Services be established, and include the following agencies: Bureau of Legislative Reference Bureau of Policy Research Bureau of Fiscal Research Bureau of Post Audit</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Legislative Reference and Fiscal Research (cont'd)</p>		<p>55. Each bureau be headed by a director, who shall be responsible to the General Assembly through the Joint Committee on Legislative Policy and Management and who shall report to the Joint Legislative Committee at least four times each year.</p> <p>56. There be established an Advisory Panel on Legislative Management and Services, to be composed of seven members appointed quadrennially--two to be appointed by the President of the Senate, two by the Speaker of the House, and three by the Governor, but not to include members of the legislative or executive branch.</p> <p>57. Whenever the directorship of a bureau of the Division of Legislative Services must be filled, the Advisory Panel will recommend a list of qualified candidates and the Joint Committee on Legislative Policy and Management will appoint one person from such list to the vacant position.</p> <p>58. Bureau directors have discretionary authority with regard to the selection, assignment, and retention of members of their own staffs.</p> <p>59. A Bureau of Policy Research, staffed by a director and four professionals, perform the following duties: (a) Provide specialized research assistance to the House Judiciary Committee, the proposed House Committees on Economic Affairs, State Affairs, and Health, Education, and Welfare, the Senate Judicial Proceedings Committee and the Senate Economic Affairs Committee. (b) Provide specialized research assistance to the proposed Joint Interim Committee on Judiciary and the Joint Interim Committee on Economic and Social Affairs.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
<p>Legislative Reference and Fiscal Research (cont'd)</p>		<p>(c) Respond to research requests made by individual legislators.</p> <p>(d) Prepare abstracts and explanations of executive agency reports and other state publications as well as occasional information or research bulletins.</p> <p>60. A Bureau of Legislative Reference, consisting of a director, about seven full-time attorneys, and a few clerical assistants, perform the following duties:</p> <p>(a) Draft bills in accord with the precepts that equal service be given all legislators, work is kept confidential and all drafts faithfully carry out the ideas of the requestors.</p> <p>(b) Approve the form of all bills introduced into the General Assembly.</p> <p>(c) Maintain a record of drafting requests and instructions given by the requestor.</p> <p>(d) Prepare a brief analysis to accompany all bills and important resolutions drafted.</p> <p>(e) Assist all committees in drafting amendments to legislation under their scrutiny.</p> <p>(f) Provide legal counsel and advisory opinions on parliamentary points and the constitutionality or other legal implications of legislation.</p> <p>(g) Begin a preliminary program of statutory and code revision, particularly to suggest formal improvements and point out areas in greatest need of corrective revision.</p> <p>(h) Provide legal assistance to committees, especially to the standing judiciary committees and the proposed Joint Interim Committee on Judiciary.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Legislative Reference and Fiscal Research (cont'd)		<p>(i) Prepare and distribute, after the third week of the legislative session, a biweekly progress report containing a cross-referenced record of introduced bills and legislative action.</p> <p>(j) Prepare a monthly newsletter for distribution during the interim period, containing brief reports of interim committee action.</p>
Interns	<p>IX,5. The Commission recommends that the Legislative Reference Service establish a legislative intern program. Qualified graduate research associates should be employed through private foundation assistance and in cooperation with Maryland's colleges, universities and law schools.</p>	<p>66. In collaboration with local universities and, perhaps, the executive branch, the Joint Committee on Policy and Management formulate an internship program under which about four graduate students may spend about ten months each year working for standing and interim committees of the General Assembly.</p>
Space and Facilities	<p>IX,6. The Commission recommends that a comprehensive study be immediately undertaken by the Legislature to determine needs for physical facilities, directed toward supplying each Senator and Delegate and each committee with adequate working space.</p>	<p>89. The General Assembly, primarily through the Joint Committee on Legislative Policy and Management, exercise constant review of requirements for facilities and office equipment and take whatever action appropriate to meet its physical needs.</p>

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Automation and Computers	IX,7. This Commission recommends that the General Assembly begin a study to determine the feasibility of adapting automation procedures to Maryland's legislative needs.	65. The Joint Committee on Legislative Policy and Management study most diligently computerized information processing, with a view toward adapting statutory search and retrieval processes to the needs of the legislature.
Local Legislation and Home Rule	X,1. The Commission commends the General Assembly for the impetus it has given home rule and recommends that the General Assembly adopt multi-optional home rule and legislative home rule in a concerted effort to relieve the Legislature of the burden of enacting local legislation.	13. By constitutional provision or statute means be devised to relieve the General Assembly of the burden of considering local legislation and to permit purely local matters to be decided at the county or municipal level.
Conflicts of Interest and Lobbying Conflicts of Interest	XI.1. The Commission recommends the enactment of a strong, viable conflicts-of-interest law applicable to members of the General Assembly.	86. The General Assembly continue to devote intensive efforts to the formulation of effective means to control legislative conflicts of interest and the Joint Committee on Legislative Policy and Management turn its attention to developing and then enforcing a legislative code of ethics.

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Ethics	<p>XI,2. The Commission recommends that the Attorney General Office be specifically empowered to advise members of the Legislature individually on ethical questions and that a board of ethics, under Legislative Council supervision, be established to act on complaints of alleged violations.</p>	
Lobbying	<p>XI,3. The Commission recommends strict enforcement of Maryland's lobbying laws, including (a) filing of all amounts expended directly or indirectly for conducting lobbying activities, (b) submission of complete information upon registration, (c) prohibition of lobbying on the floors of the Senate and House Chambers, and (d) a code of ethics to govern the conduct of all registered lobbyists.</p>	
<p>General Assembly Costs</p> <p>Costs Publicized</p>	<p>XII,1. The Commission recommends that all costs of running the Legislature be clearly enumerated on the public record with justification for such expenses.</p>	

APPENDIX A (Continued)

Subject	Citizens Commission	Eagleton
Annual Expenses	XII,2. The Commission recommends that sufficient monies be allocated to legislators to cover additional expenses in year-round committee meetings. Travel allowances should be continued. All such monies spent should be clearly placed on the public record, and each legislator should be required to account for any such monies used.	88. The Joint Committee on Legislative Policy and Management carefully oversee the expense allowances of legislators and continuously assess the need for augmenting them periodically as legislative work increases.
Funds for Programs	XII,3. The Commission recommends that adequate funds be appropriated to maintain the new legislative programs and procedures recommended in this report.	92. The people of Maryland recognize that legislative improvement is necessary, appreciate the additional expenditures required, and evidence a willingness to bear the costs of strengthening the General Assembly.
Legislative Information		
Eagleton to Make Recommendations	XIII,1. The Commission recommends that the Eagleton Institute, which has received a board of public works grant and is now beginning its study of the General Assembly, develop comprehensive recommendations for the modernization of the Legislative Reference Service and the Fiscal Research Bureau.	
Press Room	XIII,2. The Commission recommends that the Legislature provide adequate facilities for the news media covering legislative sessions in Annapolis.	

APPENDIX B

LEGISLATIVE SALARY AND PENSION PLAN--MARYLAND GENERAL ASSEMBLY

Data on Retirement Legislation for Members of the General Assembly, Legislation (Senate Bill-22) Enacted in 1966, and Their Significance in Relation to Proposals for the General Assembly to Legislate Its Own Salaries.

Senate Bill No. 22, providing for pensions of members of the General Assembly was enacted in 1966 and approved by the Governor. The provisions of this Act compare in such a manner with retirement provisions for other State employees that they have been characterized as a "grab" or "hidden benefit." These provisions are based on the salaries of members of the General Assembly which are now set in the State Constitution at \$2400 per year.

A proposed amendment to the Constitution (Question 15 on the ballot of November 8, 1966) would, if it had been approved, have stricken from the Constitution the salary of \$2400 and would have provided that their salaries be set through usual legislative procedures, i.e., legislation by the General Assembly and approved by the Governor. Question 15 was overwhelmingly rejected by the voters by a vote of 277,917 to 137,201.

Prior to this vote suggestions had been made that these salaries should be set at various figures ranging from \$6000 to \$10,000 per year. While a basic salary increase is needed, any increase would require re-evaluation of per diem benefits and the pension plan provisions under SB22.

Below are shown some of the provisions of the new General Assembly retirement system in comparison with the provisions covering practically all other State employees.

A member of the General Assembly may retire at any age at full final salary after 20 years service, 1/20th for each year of service (maximum 20 years), each year of service meaning "a year or any fraction thereof" (usually 70 days). Other State employees would have to have 70 years of service to get full salary at retirement, 1/70th for each year of service, each year being 12 months (except 10 months for teachers).

A member of the General Assembly can retire at any age after 16 years of service with a retirement allowance of 16/20ths (80%) of his final salary. Other State employees must have 56 years of service to get equal service benefits. However, the members of the General Assembly get additional benefits which the State employees can get only by taking deductions from his retirement allowance as discussed further in this paper.

A member of the General Assembly with 8 years of service can retire at 8/20ths (40%) of his last annual earnable compensation when he reaches the age of 55. If he is not 55 he can elect a deferred retirement and begin to receive his retirement allowance when he becomes fifty-five. Other State employees would require 28 years of service to retire at 40% of final salary but could not get retirement benefits unless they are already 60 at the time of retirement, or, if they have 15 years service, they can vest their retirement allowances to begin at age 60.

Other State employees who have 35 years of service can retire at 35/70ths (50%) of final salary before they are 60 years of age. Employees with 30 years of service may retire before sixty but will not receive 30/70ths of final salary. This figure for a man retiring at 50 would be reduced by 57.046% (36.174% for a man retiring at 55).

The lower the age at retirement, the longer the period during which the retiree will receive retirement benefits, and the greater the cost to the state per \$1000 of retirement benefits. Under the new legislation many members of the General Assembly will become eligible in their forties to receive retirement at full salary or 80% of full salary. Setting up the actuarial reserves for such early retirements will involve extremely large cost to the State, which will increase proportionately with every increase in salary.

Any member of the General Assembly whose service is terminated prior to the completion of eight years of service and who elects (i) to leave his accumulated contributions in the Annuity Savings Fund and (ii) to make additional contributions equal to the additional amounts which would have been contributed by him and on his behalf by the State had he remained in service until completion of eight (8) years of service, shall be eligible to receive a termination retirement allowance deferred to commence at age fifty-five (55) equal to forty percent (40%) of his last annual earnable compensation.

No such provision is made for other State employees.

Contribution for past service

A member of the General Assembly can get credit for past service, rendered prior to July 1, 1966, by contributing the amount he would have paid had he been a member of the Employees Retirement System during such service but withdrew from the System as of June 30, 1966, with interest thereon (at 4%) to date of payment.

Instead of paying 15% as is required for service rendered after July 1, 1966, they thus get service prior to July 1, 1966, at bargain rates ranging from 5.45% to 8.9%, based on age at time of entering service, although the benefits they receive are vastly greater than those granted to other State employees.

Senate Bill 22, approved April 29, 1966, relative to the new retirement provisions for the members of the General Assembly reads as follows:

Chapter 281 Section 1(13)(d) "Spouse's Benefit--upon the death of (i) any retired member who is in receipt of a retirement allowance, (ii) any retired member who is eligible to receive a deferred allowance and (iii) any active member who has completed eight (8) years of service, who leaves a surviving spouse, with whom he was living as husband or wife on the date of his death, said spouse shall be entitled to receive a spouse's allowance equal to one-half (1/2) of the service retirement allowance which he is in receipt of or would have been entitled to receive had he been eligible to retire at the time of his death."

In the case of other State employees, no survivor's allowances are made unless elected by the employee at the time of his retirement. If he elects a spouse's allowance of one half his retirement benefit, his retirement allowance will be reduced. For example, to grant this benefit to his wife of the same age, an employee who retires at seventy would have his retirement allowance reduced approximately 20% (more if his wife is younger than he).

The following computations show the effect of granting to members of the General Assembly early retirement (before 60) and spouses benefits without any reduction in the retirement allowance, compared with the provisions of the State Employees Retirement System which makes reductions in cases where spouses benefits are elected, and in cases of retirement before sixty years of age of persons having more than thirty years of service but less than thirty-five. (No service retirement is permitted for State employees with less than thirty years, but an employee with fifteen years of service can vest his retirement rights with payments to begin at sixty.) These data also show the effect of the higher fraction of retirement allowance for each year of service, 1/20th vs. 1/70th, which is available to members of the General Assembly.

NOTE: In the following examples sources were used for data as indicated.

1. Data on General Assembly Retirement from copy of Senate Bill 22 as enacted.
2. Data on State Employees retirement based on "Laws Governing the Employees' Retirement System" issued by Employees Retirement System, July, 1965. Factors used for deductions for spouses benefits and for early retirement from tables used by the State Employees Retirement System.

3. Data on life expectancies taken from "Vital Statistics of the United States 1964," Volume II Section 5 "Life Tables" prepared by the U.S. Department of Health, Education and Welfare--Published by U.S. Government Printing Office--1966.

(Computations made on the basis of the nearest dollar)

EXAMPLE NO. 1

COMPARISON OF RETIREMENT ALLOWANCE OF A MEMBER OF THE GENERAL ASSEMBLY WITH 20 YEARS OF SERVICE RETIRING AT AGE 50 WITH A FINAL EARNABLE SALARY OF \$6000, AND THOSE OF A STATE EMPLOYEE RETIRING AFTER 30 YEARS OF SERVICE AT AGE 50 WITH A FINAL AVERAGE SALARY OF \$6000 BASED ON THE HIGHEST FIVE CONSECUTIVE YEARS (USUALLY THE LAST):

<u>Member of General Assembly</u>		<u>Member of State Employees Retirement System</u>	
Retirement allowance per year (20/20th \$6000)	\$6000	30/70th of \$6000	\$2571
Net allowance after deduction for early retirement at 50 (no deduction)	\$6000	.42954 x \$2571	\$1104
Net allowance after deduction for spouses benefits (no deduction)	\$6000	.8597 x \$1104	\$ 949
*Total expected allowance during life time			
Retiree 23 x \$6000	\$138,000	Retiree 23 x \$949	\$21,827
Spouse 5.1 x \$3000	<u>15,300</u>	Spouse 5.1 x \$475	<u>2,423</u>
	<u>\$153,300</u>		<u>\$24,250</u>
 Amount of expected total allowance built up for each year of service (20 years)			
	$\frac{\$153,300}{20} =$	30 years $\frac{\$24,250}{30} =$	\$ 808

* Life expectancy at age 50, male 23 years, females 28.1 so spouse can be expected to outlive husband by 5.1 years.

EXAMPLE NO. 2

RETIREMENT ALLOWANCE FOR A MEMBER OF GENERAL ASSEMBLY RETIRING AT 41 YEARS OF AGE AFTER 16 YEARS OF SERVICE WITH ASSUMED FINAL SALARY OF \$6,000, COMPARED WITH BENEFITS AVAILABLE TO A MEMBER OF THE STATE EMPLOYEES RETIREMENT SYSTEM

A MEMBER OF THE GENERAL ASSEMBLY entering service at 25 years of age may, by consecutive service, retire with 16 years service at age 41 with a yearly retirement allowance of 16/20ths (80%) of his final earnable salary or \$800 per \$1000 of final salary. Based on life expectancy at 41 years of age (30.5 years) he may receive \$800 per year for each \$1000 of final salary for a period of 30.5 years. His wife at age 41 has a life expectancy of 36.1 years, so she may reasonably expect to live 5.6 years longer than her husband and after his death receive one-half (1/2) of her husband's allowance for 5.6 years.

The total expected life-time retirement allowance benefits for each \$1000 would be as follows:

<u>Retiree</u>	80% of \$1000 (\$800) x 30.5	\$24,400
<u>Spouse</u>	1/2 of retirees allowance \$400 x 5.6	<u>2,240</u>
	Total expected benefits per \$1000 of salary	\$26,640
	Assuming a final salary of \$6000, total expected benefits (6 x \$26,640)	\$159,840

This represents a build-up, for each year of service, of \$159,840 divided by 16, or \$ 9,990

A MEMBER OF THE STATE EMPLOYEES RETIREMENT SYSTEM could get service retirement at 41 years of age with 16 years service only by vesting his retirement benefits to begin payments at 60 years of age. Benefits would be computed as follows, to begin at 60:

16/70th of final salary of \$6000	=	\$ 1,371
Net after reduction for spouse's benefits .8327 x \$1,371	=	\$ 1,142
Retiree \$1,142 x 15.9 (male life expectancy at 60)	=	\$ 18,158
Spouse \$ 571 x 4 (longer life expectancy at 60)	=	<u>2,284</u>
<u>Assuming \$6000 average final salary</u>		
<u>total benefits expected</u>		\$ 20,442
Total expected benefits built up for each year of service--\$20,442 divided by 16 or		\$ 1,278

EXAMPLE NO. 3

TOTAL RETIREMENT BENEFITS BASED ON LIFE EXPECTANCY OF A MEMBER OF THE GENERAL ASSEMBLY RETIRING AT 45 YEARS OF AGE WITH 20 YEARS OF SERVICE BASED ON ASSUMED FINAL SALARY OF \$6000 COMPARED WITH BENEFITS OF A MEMBER OF STATE EMPLOYEES RETIREMENT SYSTEM AT SAME AGE, SERVICE AND FINAL AVERAGE SALARY

A MEMBER OF THE GENERAL ASSEMBLY with 20 years of service can retire at 45 years of age at his full final yearly earnable salary. His life expectancy at 45 years of age would be 27.1 years and his wife, of the same age, a life expectancy of 5.4 years more than the husband. His total lifetime expected retirement benefits would be as follows:

Member	\$6000 x 27.1	\$162,600
Spouse	1/2 of \$6000 (\$3000 x 5.4)	<u>16,200</u>
Total expected lifetime benefit		\$178,800

Amount of expected retirement benefits built up by each of his 20 years service (\$178,800 divided by 20) \$ 8,940

A MEMBER OF THE STATE EMPLOYEES RETIREMENT SYSTEM could retire at 45 years of age with 20 years of service but would have to vest his retirement benefits to begin payments at 60. Retirees vested benefit payments to begin at 60 would be as follows:

Basic yearly retirement allowance		
20/70ths of \$6000	= \$	1,714
Net amount after decution for spouse's allowance (.8327 x \$1,714)	= \$	1,426
Expected benefits (based on life expectancy at 60)		
Retiree: 15.9 x \$1,426	= \$	22,673
Spouse: 4. x 1/2 of \$1,326 =		
4 x \$713		<u>2,852</u>
Total expected benefits (lifetime) payment to begin at 60	\$	25,525

Expected benefits built up by each of 20 years service (\$25,525 divided by 20) \$ 1,276

Usually it has been held that benefits under a contributory pension plan cannot be reduced for members who have paid contributions to it. The Retirement Law could be amended to apply to those legislators who are elected after the amendment. In any event, implementation of the salary of \$6,500 per year (without per diem benefits) recommended by the Citizens Commission would have to include a reevaluation of the 1966 pension plan.

Note: This study was prepared by the author for analysis by the Citizens Commission and the Maryland Constitutional Convention. During the Convention, Mr. Francis X. Gallagher, Chairman of the Legislative Branch Committee, requested and obtained a verbal commitment from House Speaker Marvin Mandel to review the entire legislative pension plan program, presumably to bring it in line with an increased salary.

APPENDIX C

GEORGE S. WILLS, REMARKS PREPARED FOR THE LEGISLATIVE ARTICLE COMMITTEE, HON. FRANCIS X. GALLAGHER, CHAIRMAN, MARYLAND CONSTITUTIONAL CONVENTION, FRIDAY, SEPTEMBER 22, 1967

MR. CHAIRMAN AND MEMBERS OF THE LEGISLATIVE ARTICLE COMMITTEE, thank you for the opportunity to testify on behalf of the Citizens Commission on the General Assembly.

As Speaker of the California General Assembly, Jesse Unruh, stated last April here in Maryland: "No other governmental body deals more directly and continuously with the quality of life in America than the state legislature." Recognition of this fact and the increasing tendency for power to be concentrated in the Executive branch, must be the starting point for any discussion of legislative problems.

Proposed Section 3.02 "Legislative Districts"

Although Section 3.02 is much superior to Article III, Sections 1-5 of the present Constitution, it does raise, by omission, one question. Under this proposed Section, a legislative district could conceivably include more than one county and, in fact, conceivably many districts would cross county or Baltimore City lines. I subscribe to the broad principle that the people and their representatives should hold as nearly as possible the same background and interests. Further, if many legislative districts crossed county lines, responsibility and interest by the local citizenry, their elected local officials, and their elected legislators, might be blurred. Therefore, I would suggest the inclusion of "Such districts shall as nearly as possible be within a single county" or words to that effect.

Proposed Section 3.03 "Redistricting"

Our Commission recommended that the original impetus for redistricting lie in the General Assembly itself. We still maintain that position because we believe that the legislature, not the governor, should determine its districting. Further, the draft section seems to confuse and the Comment does not clarify exactly what degree of freedom the General Assembly will have in adopting a redistricting formula. That is, the first sentence of Section 3.03 states that "the governor shall present to the General Assembly plans of . . . districting . . ." and the third sentence states that "The General Assembly shall by law enact plans of . . . districting . . ." It is not clear in this draft whether or not the General Assembly may even introduce their own plan of reapportionment or modify the governor's plans." If you decide to retain the initiative in the governor, this should be clarified.

Furthermore, because of the expense of convening the legislature, I would recommend that the requirement that the governor convene a special session for reapportionment if the legislature is not in

session be eliminated. It is necessary to reapportion equitably after each decennial census, but it is not necessary to do so in such haste and with such expense to the taxpayer.

Finally, on the broad principle of legislative autonomy from the governor and legislative responsibility for its own body and in the broad theory that the legislature should set policy, I would recommend for consideration as an alternative to your Section 3.03, the proposals of the Citizens Commission found on pp. 13-14 of our Report.

Proposed Section 3.04 "District Representation"

The mention in the accompanying Comment to Section 3.04 of the draft on the single member district deserves some response. As a matter of broad policy, I am opposed to single member districts for the House because such districts would

- 1) be too small in some instances,
- 2) would not provide for a cross-section of the community to run and represent the community,
- 3) would tend to lower the caliber of candidates and members of the General Assembly, and
- 4) would encourage parochialism.

As already stated, I believe that Senate and House districts should follow county lines as closely as possible. Consequently, instead of having two legislators from two small counties comprising one district, it would be better to elect a legislator from each small county even in cases where they would result in a single member district.

But the use of single member districts in heavily populated areas would tend to diminish the choices of the citizens. Further, the notion that the single member district would in some magical way reduce the size of the General Assembly, is unfounded.

As the late V. O. Key (Johns Hopkins and Harvard political scientist) stated, "The validity of the single member district theory has not been adequately tested against the evidence."

This committee might consider, nonetheless, the possibility of reducing the maximum number of delegates in any one district from six to three or four as a way of striking a reasonable medium between the single member district notion and requiring the voters, if they are to vote intelligently, to familiarize themselves with as many as six candidates.

Proposed Section 3.05 "Qualifications of Legislators"

I would suggest that Section 3.05 of the draft be modified to include a district residency requirement of six months. I am aware that Section 9 of Article III of the present Constitution has a district residency requirement of one year. It does not appear to me to be necessary to require a year's residency in a district but a district residency requirement might be advisable for the following reasons:

- 1) to prevent carpetbagging from one district to another by politicians eager to find weaker candidates to oppose,
- 2) to keep legislators as close as possible to the people they represent,
- 3) to insure that legislators at least have some acquaintance with the problems and needs of their constituents,
- 4) to prevent the possible growth of "sure" districts which might continue to elect the scions of famous political families even after they have moved out and no longer are in contact with their constituents. In short, an absentee delegate or senator is just a modern form of that ancient evil--the rotten borough.

Proposed Section 3.07 "Vacancies"

Section 3.07 of the draft Constitution is radical departure from the current provisions in Section 13 of Article III. Essentially, under the present section the local state central committees appoint new members to fill vacancies while in the draft section, the power of appointment is vested in the governor. The proposed section might lead to unwarranted gubernatorial interference in the legislature especially when one considers the fact that one out of every seven members of the 1966 General Assembly originally entered the legislature by appointment.

In addition, the same statement which the Citizens Commission made about the present provision for filling vacancies is applicable to the proposed draft (p. 14). "The weakness of this provision is that it allows the Governor to replace legislators elected by the people with legislators chosen behind closed doors. This is a violation of the basic principle of representation."

The provision in Section 3.07 that the person appointed shall only serve until the next general election is a good one but I would suggest that an alternative method of appointment than that proposed in the draft be used. One such alternative might be that proposed by the Citizens Commission (on p. 14 of the Citizens Commission Report). We suggest that the power of appointment remain in the appropriate state central committee following a public hearing and a requirement to reveal the persons being considered to fill a vacancy.

Proposed Section 3.08 "Compensation of Legislators"

The Citizens Commission endorses the concept embodied in Section 3.08 permitting the legislators to set their own salaries. Recognizing the political difficulties inherent in requiring a legislator to set his own salary, we would suggest that any salary increase be applicable only to the General Assembly elected after such legislation is passed.

Of course, it is incumbent upon the legislature, both for the public and itself, to receive professional advice, as to what an equitable salary would be.

Finally, I would suggest that the proposed Constitution prohibit per diem payments because these payments are hidden from public view.

Proposed Section 3.12 "Legislative Sessions"

The Citizens Commission recommends removal of a constitutional limitation on the length of legislative sessions (see p. 15, The Citizens Commission on the General Assembly Reports to the Legislature and the People of Maryland). The 70-day limitation in proposed Section 3.12 of the draft Constitution is a step backward in achieving full legislative responsibility.

Although a 70- or 90-day session would be adequate to meet the needs of the 60's, in twenty or thirty years such a session may be totally inadequate and, if it becomes necessary to change the length of the legislative session, the new Constitution faces the possibility of becoming cluttered with amendments.

Further, the legislature should have the power to convene itself. Requiring for such purpose a written request by three-fifths of the total membership of each house is unnecessary and unneeded. A much superior method for the legislature to convene itself in special session might be by the Speaker of the House and President of the Senate jointly requesting the Governor to convene a special session which the governor would then be required to do.

With the constitutional abolition of per diem payments and allowances, as recommended by the Citizens Commission, the legislature would itself wish to close its sessions as quickly as possible. Each legislative session, however, should not be burdened with determining how long that session shall run. Consequently, I would recommend that the first session of each newly elected General Assembly be empowered to determine the length of all four sessions of that General Assembly, such determination to be altered at the three subsequent sessions only by a three-fifths vote or by regular process of law.

Expecting or requiring legislators to set their own salaries while denying to them the right to determine their own sessions is inconsistent.

Therefore, I would suggest an alternative draft on legislative sessions:

The General Assembly shall convene in regular session on the third Wednesday of January of each year. As the first order of business the first session of each newly elected General Assembly shall by law establish the length of its four regular sessions. The governor may convene a special session of the General Assembly at any time and must convene a special session upon the written request of the presiding officers of the House and Senate.

Unicameralism v. Bicameralism

Although the Citizens Commission has rejected unicameralism, it should be seriously considered. Speaker Unruh has spoken in favor of unicameralism and the draft Constitution effectively sums up both its advantages and disadvantages.

What must be considered in the final analysis, however, is the effect of adopting a single house legislature on the strength of our State's government and its legislative branch. From a cost aspect, complete modernization of a bicameral General Assembly may be difficult. That is, with taxes and costs spiraling, it may be impossible to publicly justify the expenditure of more funds on legislative assistance in terms of staffing, physical facilities, committee records and the like because of the expense of maintaining two houses. In terms of present legislative costs, the savings of unicameralism are by no means spectacular. But in terms of what we should be spending for our legislative branch, the savings would be significant.

In addition, if unicameralism would significantly assist public understanding of the legislative process and if unicameralism would materially increase public confidence in and respect for the legislature, then it should at least be examined by the Convention.

Frankly, the loudest voices raised against unicameralism may be those of the politicians who are afraid of losing jobs and patronage--reasons that you can be sure will not be articulated. It is high time that the State of Maryland tried to save some of its taxpayer's dollars and the suggestion that a bicameral legislature is necessary as a check and balance is open to question. Further, careless legislation (point two, p. 53 in the draft Constitution's discussion of bicameralism) would be better avoided by providing the legislature with adequate staff assistance; the amount of "graduation" from the lower to the upper house is not that significant (point 4) witness several first term senators in their 20's and 30's; a unicameral legislature by being more clearly in the public eye may be much more difficult to corrupt than a bicameral one (point five, p. 54). It may be possible to more clearly identify responsibility in a unicameral system. The

suggestion that in a bicameral legislature "citizens might feel they would know someone" is on its face ridiculous (point six); under one man-one vote the suggestion of point seven is highly improbable; and, point eight, the legislature needs to be encouraged to accumulate power in the face of executive expansion.

Frankly, the loudest voices raised for unicameralism, may be from those who believe that any change is good change or from those who are attempting to make political capital and create sensational headlines by offering structural change as a cure-all--again reasons that are not articulated! The suggestion that membership in a unicameral legislature confers greater prestige (point two, p. 54) is at least open to question; although unicameralism may facilitate efficiency (although internal rules may negate any efficiency gained), that it provides more thorough consideration of legislation has never been shown (point three); in the course of its study the Citizens Commission has not found any rivalry between the two houses hampering the legislative process (point four); and we cannot see how lobbying will be reduced, if anything there will be more lobbyists per legislator in a single house (point six).

The strongest argument for unicameralism is that it would increase the power of the legislature in relation to an inexorable shift of power to the executive. The strongest argument for bicameralism is that two houses offer one more opportunity to weed out poorly conceived legislation and bills prepared purely for hometown consumption. Legislation is forged on the anvil of discussion and negotiation, the essence of the legislative process. More important than whether we have one house or two, is the question of what the Constitution and the legislative leaders themselves do with what we have.

Toward a Twentieth Century Legislature

Maryland today faces challenges undreamed of in 1867 when the present Constitution was written. The federal government has assumed more and broader powers at least partially because of a vacuum created by the failure of the states to grapple with the problems of the twentieth century. The states have failed because their legislative branches have failed. Outmoded and outworn concepts have too long shackled state legislatures.

The work of the Constitutional Convention Commission and the work of this Convention in drafting a new Constitution provide an opportunity to breathe new life into our General Assembly. The legislative article of the draft Constitution is an excellent first step toward the goal of full legislative responsibility for legislative matters. My comments today are not meant as criticism; they are simply suggestions based on the theory that bad men can pervert any system but good men can be severely hampered by a restrictive system.

The goal of full legislative responsibility and full equality for the legislature as one of the three equal branches of government will not be easy to achieve. The public is frankly sceptical of politicians in general and legislators in particular. The General Assembly, to erase the bad taste in the mouths of Maryland's citizens, must, like Caesar's wife, be above reproach.

For this reason, the legislative leadership must conclusively demonstrate that they intend to use any new-found constitutional freedom in the best interests of the State, regardless of party politics or monetary gain. To this end, if constitutional restrictions on legislative power are to be eased and the direction taken by the proposed draft is adopted by this Convention, to assist acceptance of the new Constitution by the voters the legislative leadership must pledge to

- 1) enact only a reasonable salary
- 2) where necessary, conduct year-round committee meetings to complete legislative business
- 3) enact a strong conflicts of interest law
- 4) abolish hidden benefits such as the lush and entirely unjustifiable legislative pension plan
- 5) establish mechanisms to assure continuous and responsible public information on all facets of the General Assembly's activity.

As you can see, I believe that legislative responsibility is a two-sided sword. Unless the public is assured that the legislature will exercise its new-found constitutional freedom in a responsible fashion, at the polls next May they may well respond with "A plague on both your houses."

APPENDIX D

Assembly Still Needs to Make Major Reforms

by Jack Eisen¹

"Owing to antiquated organization and procedures, the legislative branch of Maryland government has failed to meet the demands placed upon it."

A year has passed since these words were published by the Citizens Commission on the General Assembly. Its report--it might be called a friendly indictment--was accepted amid fanfare by the leadership of the General Assembly, which proceeded to ponder its four dozen recommendations.

Some of these, including a few important ones, have been accepted. But in the opinion of the Citizens Commission chairman, George S. Wills, the most important ones are yet to be carried out and should be acted upon at the session that begins next Wednesday.

If they are not adopted before Maryland voters decide whether to ratify the proposed new Constitution in May 14 referendum, Wills said in an interview, the legislature may find itself unable to cope with an expected heavier workload. In the process, it may condemn itself to a permanent weak-sister role, with far less influence over State operations than the governor.

The first impact of the greater workload may come next summer and fall at a lengthy special session. This probably will be convened to enact laws required to carry out provisions of the new Constitution.

Most urgent among the recommendations, Wills said, are these:

- The Legislature must empower its committees to meet and hear witnesses on a year-round basis, not merely during the hectic hurly-burly of legislative sessions.
- It must accept the need for adequate professional staffing of these committees, again on a permanent basis, similar to that in Congress.
- Finally, the view of the \$8000 minimum annual salary voted by the Constitutional Convention for legislators, lawmakers must eliminate the financial prerogatives--per diem allowances during sessions and

¹The Washington Post, January 9, 1968.

a generous retirement program--that make them look like they are riding the gravy train.

The last point is especially important, Wills said, because the first two costly proposals will require public support and confidence in the Legislature's aims.

Wills, associate director of public relations at Johns Hopkins University and immediate past president of the Maryland Young Democrats, praised the legislative leadership for its receptiveness to the Commission's proposals.

SEVERAL IMPORTANT changes already have been carried out or are in the works, Wills said--notably the expected creation of a joint House-Senate Committee to oversee State budgeting and finances throughout the year.

Wills credited Sen. Blair Lee III (D - Montgomery) for winning leadership's support for his reform. Lee, he said, has been the staunchest supporter for the Commission's proposed reforms in the General Assembly.

Another impending reform, which may make some old legislative hands unhappy, is House Speaker Marvin Mandel's proposed consolidation of nine House of Delegates committees--some of them ineffectual and relatively inactive--into four committees, all to be regarded as major. Only two now have that status.

The lawmakers made unhappy will be the committee chairmen who must trade that status for less exalted roles as heads of subcommittees within the new units. There will be far more gainers, however, since every delegate will have a seat on a major committee with greater involvement in and responsibility for important legislation.

But the next, and most urgent, step will be year-round committee activity, with adequate staffing, in Wills view.

AT PRESENT, regular General Assembly committees have staff assistance only during the sessions, drastically limiting the availability of qualified personnel. When sessions end, someone piles the too-sketchy committee records into a closet and everybody goes home.

The next year the process again starts from scratch. Even if an issue is raked over during the recess by the Legislative Council or a special but powerless interim committee, the expertise and continuity that could be provided by having the same committee membership and a permanent secretariat is lost.

This is especially troublesome since bills covering a wide range of social, legal and economic and otherwise technical subjects are growing increasingly more sophisticated and complex.

In Wills' opinion, there is hope. "The Legislature is about where Congress was 20 years ago in staffing and operations, and realization of the need for improvement. There has been a good beginning, but it should be recognized for what it is--a beginning."

APPENDIX E

MEMORANDUM TO DR. MILTON S. EISENHOWER FROM THE CHAIRMAN
OF THE CITIZENS COMMISSION ON THE GENERAL ASSEMBLY

Prior to his public endorsement of the proposed Maryland Constitution, Dr. Milton S. Eisenhower, honorary chairman of the "PRO-CON" ratification committee, asked the author for a memorandum analyzing the principal arguments being used against the document. The memorandum emphasized those major areas that were publicly used by the opponents. It is interesting to note that the single-member legislative district did not become a focus of public attack, primarily because the shift from several representatives per legislative district to one delegate was not a provision that could engender an emotional public opposition. Rather, it created an effective, behind-the-scenes attack from established political organization. But those arguments identified in the following memorandum were simplistic and highly marketable to the public in a "vote no" campaign"

April 2, 1968

Dr. Eisenhower:

Concerning the Maryland Constitution, you may find it helpful to take a reading on the principal arguments being used by opponents. After two talks last week (one to a hostile audience) and a TV debate with Senator Malkus, I find the anti-Constitutional argument based on four general themes:

1) Some sort of "plot" to subvert our rights, the participants in that plot being the National Municipal League and other "leftist" groups who wish to strengthen state executive branches, at the expense of the legislature and judiciary. The objective is to ally the governors in some sort of conspiracy with the national government to weaken our fundamental freedoms. Comment: This approach sounds way out, but has credibility among the ill-informed, particularly in Baltimore County and Districts 1 and 6, Baltimore City. It is ironic that those who for years have called for more states rights and less national power now oppose the strengthening of state government as a means to redress the balance.

2) An attempt to make the governor a dictator. Comment: Executive reorganization is your bailiwick, but it should be

noted that, under the new Constitution, Maryland's governor will have the authority to reorganize 240 boards, commissions, and agencies into 20 major departments. The opponents claim that reconstituting the Board of Public Works will give the governor unwarranted power over this body that passes on all major State contracts. Present Board of Public Works includes the governor, the comptroller, and the state treasurer, who is an appointee of the Legislature. The new Board of Review includes the governor, the comptroller, and a third appointee named by the governor. Opponents claim this is a violation of the separation of powers--the most effective answer to that separation of powers applies between branches, not within a single branch of government. Reorganizing the Executive Branch, by strengthening the power of its top elected officials, provides the closest link to the people in preventing the governor from being hamstrung by a cumbersome bureaucracy.

3) Forced regional government and annexation. This is the argument used by Dale Anderson and his political associates in Baltimore County and, less vigorously, by Joe Alton, Anne Arundel County executive. Comment: Anderson's position is on shaky legal ground, and I base that assertion on a memorandum prepared by Richard Case, attorney (Smith, Somerville, and Case), Con-Con delegate, and a political ally of sorts with Anderson. He submitted his arguments to Anderson, and Dale simply wouldn't listen. The real motives behind Anderson's position are political patronage and an "ear-to-the-ground" judgment that the Essex-Dundalk area of Baltimore County, his political stronghold, is against the new charter.

4) A judiciary that is removed from the people. Comment: This argument proceeds along the line that, by installing a new four-tier court system with legal training required as qualification for all judges, the people will somehow be victimized by a judiciary that is dominated by the prestige law firms in Baltimore and is subject to gubernatorial control. I answered this charge by Senator Malkus by saying that as a layman, I would want my case to be heard in court, whether on the highest or lowest level, by a judge who possessed qualifications other than the ability "to deliver a precinct." In addition to the professionalism argument, you can emphasize that the people do play a part in recommending judicial appointments to the governor--seven laymen and seven lawyers constitute the nominating commission. Finally, nothing is sacred about the election of judges. Dr. Winslow (in an attached "Sunpapers" article) notes that only four of the seventy incumbent judges in the Baltimore City system were initially elected. (Sixty-six were appointed by the governor without restriction on his choice--anything more political?)

George S. Wills

APPENDIX F

JUDICIAL PROCEEDINGS COMMITTEE
 MARYLAND STATE SENATE
 1968

COMMITTEE STAFF PERSONNEL RESPONSIBILITIES

COMMITTEE PROFESSIONAL STAFF

1.0 Counsel - to provide legislative analysis.

1.1 General Counsel -

- to assist the chairman and members of the committee in reviewing and analyzing legislation and resolutions referred to the committee.
- to consider the impact of proposed legislation on current law and on other proposed legislation.
- to prepare memoranda for the committee describing his conclusions.
- to coordinate the committee professional staff.

1.2 Assistant General Counsel -

- to assist the chairman and the general counsel in the latter's responsibilities.

COMMITTEE ADVISOR

2.0 Advisors -

- to provide the chairman and members of the committee with nonlegal specialized knowledge. (These persons would not be paid except perhaps on a use basis. They would make themselves available to the chairman and committee counsel to discuss matters which are of an esoteric nature.)

COMMITTEE ADMINISTRATIVE STAFF -

- to provide administrative support to the chairman.

3.0 Executive Assistant to the Committee -

- to prepare amendments with Legislative Reference Department as requested by the Committee.
- to contact prospective witnesses and inform them of the problem areas to which they wish or will be asked to address themselves.
- to perform inter-committee liaison and communications functions.
- to schedule and give public notice of committee hearings, and assign bills and resolutions for public or executive consideration.
- to manage the committee administrative staff.

3.1 Administrative Assistant to the Chairman -

- to assist the chairman of the Committee as an individual legislator and as chairman of the committee.
- to perform intra-committee liaison and communication functions.
- to take the minutes of committee meetings and record the votes of the committee and subcommittees as prescribed by rule.
- to maintain a record of receipt and disposition of all bills and resolutions referred to the committee.

3.2 Secretary to the Committee -

- to perform shorthand, typing, and miscellaneous clerical duties at the direction of the committee chairman, Executive Assistant to the Committee and counsel to the committee.
- to act as public receptionist.

3.2.1 Assistant Secretary to the Committee -

- to assist the Secretary to the committee.
- to serve as committee librarian.

3.3 Secretary to the Chairman

- to perform shorthand, typing and miscellaneous clerical duties at the direction of the chairman and administrative assistant to the committee.
- to be responsible for public information functions.

3.4 Clerk of the Committee -

- to act as messenger or aide to the chairman, committee members and staff.
- to distribute bills and resolutions to members of the committee.
- to maintain committee room and desks in proper order.

MARYLAND STATE SENATE
JUDICIAL PROCEEDINGS COMMITTEE
ANNAPOLIS, MARYLAND
1968

PUBLIC INFORMATION MEMORANDUM

Senator J. Joseph Curran, Jr. announced a staff reorganization of the Judicial Proceedings Committee of the State Senate over which he presides as chairman.

Senator Curran stated that the "recent studies of our legislative system by the Eagleton Institute and the Wills Commission confirmed my own long held view that strong professional staff support for the major committees of the Senate and House is essential."

He noted that tentative steps in this direction were taken by him last year when he first took the reins of the committee, which is considered one of the most important in the General Assembly. Pronouncing that experiment "a real success in terms of both administrative efficiency and legislative productivity," Senator Curran stated that the announced organization developed from that experience and that of the recent Constitutional Convention as well as the practice of the United States Congress. The staff plan was drawn by his committee counsel, John Carroll Byrnes.

He noted that the system is designed to permit its use both during and between sessions of the General Assembly if interim joint committees replace the Legislative Council as recommended by the cited studies.

Senator Curran noted that budget limitations have forced him to have two members of his staff serve in two positions. He pointed out that committee staff should be permanent and well paid to permit a careful and intense review of prefiled bills and to provide greater professional and administrative support for more creative work by the committee members during the year. The qualifications for each position should be established in legislative rules.

Senator Curran announced that John Carroll Byrnes, a Baltimore City attorney, will continue as general counsel to the committee and will be joined by Richard Berndt as assistant general counsel and executive assistant to the committee. Dr. Robert Loevy, a noted assistant professor of political science at Goucher College has been appointed advisor to the committee. Both Dr. Loevy and Mr. Berndt served in similar roles with the Constitutional Convention.

APPENDIX G

STATEMENT TO THE LEGISLATIVE COUNCIL BY THE CHAIRMAN
OF THE CITIZENS COMMISSION ON MARYLAND GOVERNMENT

AUGUST 15, 1968

"REORGANIZED COMMITTEES FOR THE MARYLAND GENERAL ASSEMBLY"

Senate President James, Speaker Mandel, and members of the Legislative Council:

On behalf of the Citizens Commission on Maryland Government which prepared a report on modernizing the Legislature one year ago, I am pleased that you are taking the step of considering the creation of permanent standing committees as an integral part of the Maryland General Assembly operation. One year ago, Senator Blair Lee's proposals for a Joint Budget Committee to monitor Executive spending, which accorded with the Commission's key financial recommendations, were adopted, and today the Fiscal Research Bureau is being overhauled. In addition, major reorganization and reduction in the number of Senate and House committees has occurred, thanks to the planning of Speaker Mandel, Senator James, and other legislative leaders.

We have heard much about constitutional change. But as essential as constitutional change, and in many ways more so, is the internal reorganization that you, the experienced leadership of the Assembly, take to put the Legislative Branch back in the policy-making arena and on a strong competitive basis with the Executive and Judicial branches. An effective internal operation is more critical to a modernized General Assembly than most of the proposed constitutional provisions, and is certainly on a par with what I think are the most useful constitutional changes that should someday be put into our Constitution as amendments: a longer session; improved salaries, provided the pension benefits are reduced; and the post-audit provision. If the Constitutional Convention had concentrated on these items instead of dabbling with the "textbook" solution of single-member districts, the proposed Legislative Article would have had more public support.

What you are doing this evening will create more public confidence than any other step you can take towards legislative reorganization, including constitutional changes. The real work of the Assembly is done in committee, provided committees are operated on a year-round basis, instead of the "pressure-cooker" budget hearings

when your committees attempt to evaluate the impact of Maryland's billion-dollar business in the first four weeks of each legislative session. Also, a professional committee system with adequate research staff, will reduce the pressures of time and last minute log-jam that occurs at every session. With the complexity of today's legislation, these year-round committees must devote the necessary time to examine the impact of the very costly programs that are continually being presented to you, both from the State and Federal Governments.

As you know, the Eagleton Institute recommended abolition of the Legislative Council as part of the improved committee system. I do not believe this is necessary. The Council retains an important function as the coordinating, administrative arm of Assembly operations. But the Council cannot do it all, and it is time that you distributed the legislative workload throughout the entire membership. I can't think of a better way to encourage public confidence in the State Legislature--you cannot get public support for salary increases and other administrative benefits until you get all your members earning their pay.

With reference to year-round sessions, the Citizens Commission opposed putting the Maryland Assembly on that basis. It has been shown in such states as Massachusetts that sessions lasting a year fail to provide the proper incentives to meet deadlines and get the job done. Several years ago, the Massachusetts Legislature hadn't even passed the Governor's budget by the end of the year. And I am not so sure that you want to "invent a kind of bureaucrat-legislator" who lives off the system in formal sessions that last all year.

I can't emphasize enough that there is a crisis in confidence in government today, on all levels--federal, state, and local. The public is fed up, and may well register that discontent in forthcoming elections. If you, the legislative leaders of Maryland assume the burdens of state government through properly staffed committees that scrutinize, on a year-round basis, proposals to spend taxpayer's money, then confidence may begin to return--at least in Maryland. Only then can you get the necessary public and news media support to carry out your vital mission--with these steps taken, you can be sure that the Citizens Commission and the citizens of Maryland back you to the hilt.

As further steps to strengthen a year-round committee operation, I strongly recommend the adoption of a consent calendar and pre-filing procedures to move legislation quickly at the beginning of each session so that you won't have to race the clock during the final 24 hours.

George S. Wills

APPENDIX H

THE BILL DRAFTED TO RESTRUCTURE THE LEGISLATIVE COUNCIL

August, 1968

AN ACT to repeal and re-enact, with amendments, Sections 27, 28, and 35 of Article 40 of the Annotated Code of Maryland (1965 Replacement Volume and 1968 Supplement), title "General Assembly," subtitle "Legislative Council," reconstituting the membership of the Legislative Council, amending the laws concerning its duties, operations, and functions, stating the legislative intent of this enactment, and relating generally to the Legislative Council and its membership and operations.

- - - -

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 27, 28, and 35 of Article 40 of the Annotated Code of Maryland (1965 Replacement Volume and 1968 Supplement), title "General Assembly," subtitle "Legislative Council," be and they are hereby repealed and re-enacted, with amendments, to read as follows:

27.

(a) In redefining the functions of and reorganizing the Legislative Council in 1969, the General Assembly intends and looks toward a broad expansion in the public activity and legislative contributions of its members.

It is the legislative intent that (1) the Legislative Council, reduced in size to twenty members, is intended ordinarily to function as a steering or rules committee, appointing committees, assigning projects for study, supervising research and other work of its committees, and, finally, receiving from them their conclusions and recommendations to be considered for submission to the General Assembly; and

(2) Standing committees of the General Assembly be drawn upon for the basic membership and work of the several Legislative Council committees, assuring year-round participation in and contributions to public legislative study by a high majority of all members of the General Assembly.

(b) The Legislative Council is created. Said Council shall be composed of twenty members, as follows:

(1) From the Senate: The President, [[the chairmen of the finance committee, the chairman of the judicial proceedings committee, the chairman of the committee on economic affairs,]] the floor leader of the majority party, the floor leader of the minority party,

and ~~[[ten]]~~ seven additional members, including the chairman or chairmen of committees deemed appropriate, to be appointed by the President and approved by a majority vote of the Senate.

(2) From the House of Delegates: The Speaker, ~~[[the chairman of the ways and means committee, the chairman of the judiciary committee,]]~~ the floor leader of the majority party, the floor leader of the minority party, and ~~[[eleven]]~~ seven additional members, including the chairman or chairmen of committees deemed appropriate, to be appointed by the Speaker of the House and approved by a majority vote of the House.

28.

It ~~[[shall be]]~~ is the function of the Council

(1) To collect information concerning the government and general welfare of the State;

(2) To examine the operation of previously enacted legislation and of the common law and of the State Constitution and recommend amendments thereto;

(3) To study the rules and procedure of the Senate and House of Delegates and from time to time recommend changes therein to improve and expedite the consideration of legislation by the General Assembly;

(4) To supervise the work of interim committees or commissions appointed at the direction of the General Assembly or of either house;

(5) To appoint and utilize as reasonably as possible the standing committee structure and membership of the Senate and House of Delegates, in order to obtain maximum benefit from the services and abilities of members of the General Assembly;

(6) To screen the proposals listed by it for study and investigation, assign projects to and determine the functions of committees of the Council and of those appointed by it, and direct and manage research efforts and programs for its work and that of its committees;

(7) To act as an interim legislative steering committee and (within the limitations of directives of the General Assembly) to set legislative policy for and manage affairs of the General Assembly when that body is not in session; and

(8) To prepare a legislative program in the form of recommendations or bills or otherwise as in the opinion of the Council, the welfare of the State may require, to be presented at the next session of the General Assembly.

APPENDIX I

RESEARCH STAFF INCREASES FOR THE GENERAL ASSEMBLY,
CALENDAR YEAR 1969 OVER CALENDAR YEAR 1968

(See Appendix F for Staff Plan proposed for Senate Judiciary Committee by Senator Joseph Curran (D. Baltimore City, 3rd District.)

I. Staff as of September 1, 1968Positions, 1968:

- 1 - Director
- 4 - Legislative Analysts
- 1 - Research Analyst (Vacant)
- 1 - Administrative Assistant
- 4 - Secretaries
- 1 - Librarian
- 1 - Associate Librarian
- 1 - Assistant Librarian
- 1 - Supervisor, Services and Supply
- 1 - Receptionist

Legislative Council Committees, 1968:

- 1 Analyst and 1 Secretary for each of the three major committees

Bill drafting and general research, 1968:

- 1 - Analyst

Library Services, 1968:

- 1 - Librarian
- 1 - Associate Librarian
- 1 - Assistant Librarian

Administration, 1968:

- 1 - Director
- 1 - Secretary
- 1 - Administrative Assistant
- 1 - Supervisor, Services and Supply
- 1 - Receptionist

II. Proposed Staff as of May 1, 1969

Proposed positions, 1969:

- 1 - Director
- 9 - Legislative Analysts (5 new)
- 1 - Research Analyst
- 1 - Administrative Assistant
- 4 - Secretaries
- 1 - Librarian
- 2 - Associate Librarians (1 new)
- 1 - Assistant Librarian
- 1 - Library Assistant (New)
- 4 - Secretary III (New)
- 1 - Supervisor, Services and Supply
- 1 - Receptionist

Legislative Council Committees, 1969:

Judiciary (or its equivalent)

- 2 Analysts
- 1 Secretary

Note: In the 1970 Session and thereafter during legislative sessions, the two Analysts are to work respectively for Senate Judicial Proceedings and House Judiciary.

Economic Affairs (or its equivalent)

- 3 Analysts
- 1 Secretary

Note: In the 1970 Session and thereafter during legislative sessions, the three Analysts are to work respectively for Senate Economic Affairs, House Economic Matters, and House Natural Resources.

Budget and Finance (or its equivalent)

- 2 Analysts
- 1 Secretary

Note: In the 1970 Session and thereafter during legislative sessions, these two Analysts could be available to work respectively for Senate Finance and House Ways and Means. However, there is a basic problem here relating to the staff work which will be done for the money committees under the

Department of Fiscal Services. Whether the staff work to be done by Fiscal Services will be sufficient for the money committees or whether additional assistance should be supplied from the Legislative Council staff, are questions to be resolved by the Committee in consultation with Paul Cooper and his assistants. Copies of this proposal are being sent to Paul Cooper with the suggestion that he attend the meeting of the Committee on September 17 and perhaps also bring Ken Bragg and Bill Ratchford along.

Bill drafting and general research, 1969:

- 2 - Analysts
- 1 - Secretary III

Library services, 1969:

- 1 - Librarian
- 2 - Associate Librarians
- 1 - Assistant Librarian
- 1 - Library Assistant

Administration, 1969:

- 1 - Director
- 1 - Secretary
- 1 - Research Analyst
- 1 - Administrative Assistant
- 3 - Secretary III (Pool)
- 1 - Supervisor, Services and Supply
- 1 - Receptionist

Additional Office Space, 1969:

Office space is available on the second and third floors at 16 Francis Street, Annapolis, conveniently close to the present offices on the fourth floor.

Thus, on the easterly side of the third floor are seven two-room offices used by members and committees of the House during legislative sessions. They could be used by the staff during interim periods. The staff individuals could have other office space in or around the State House during legislative sessions and could easily vacate the rooms on the third floor at 16 Francis Street for the use of legislators during that time.

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Weisengoff, Paul, Delegate, July 2, 1968.

VITA

George Stockton Wills was born March 7, 1936, in Baltimore, Maryland. He received the B.A. degree from Pennsylvania State University and the M.A. degree from the University of Virginia, where he studied under a Woodrow Wilson National Fellowship. He served for three years in the United States Navy and holds the rank of Lieutenant Commander in the Naval Reserve.

In 1964 he became Assistant Public Relations Director at the Johns Hopkins University and currently serves as Public Relations Director for the University's Homewood campus. From June 1968 to the present he has served as Administrative Assistant and Consultant to Dr. Milton S. Eisenhower, Chairman of the President's Commission on the Causes and Prevention of Violence in the United States. Mr. Wills is also Chairman of the Citizens Commission on Maryland Government, a statewide nonpartisan organization which has conducted a study of the Maryland General Assembly and modernization of local governments within the State. He also served on the Governor's Constitution Referendum Commission in Maryland during 1966-1967.

Mr. Wills is married to the former Suzanne Hansen and is the father of three children.

Publications

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